

(B) Data collected for self-improvement and improvement of the judiciary shall be tabulated by question and disseminated as follows:

(i) Individual data and results shall be provided only to the judge evaluated together with the averages for each judge's court level for each survey question, within geographic areas defined by the Oversight Committee.

(ii) Summary data and results, without individual identification, shall be provided to the Council and Boards of Judges by court level within geographic areas defined by the Oversight Committee.

(C) Data collected for certification shall be tabulated by question and be disseminated as follows:

(i) Consistent with the level of performance established pursuant to subsection (5)(C)(ii), the Council and the judge evaluated shall be provided individual results which identify whether each judge's survey results by question reflect satisfactory performance, inconclusive performance, or unsatisfactory performance.

(ii) The Council, the Boards of Judges and individual judges shall be provided summary data and results without individual identification for each question for each court level and by geographic area as defined by the oversight committee.

(iii) Ninety days following the survey, the Council shall make available to the general public individual judge results in the same format as subsection (6)(C)(i) above provided that:

(a) the evaluation criteria have been adopted and in effect for at least one year;

(b) the judge has had 30 days to review and comment to the Council on the data and results before they are released.

(D) Under no circumstances shall the data collected or the results of the evaluation be used to discipline an individual judge or be disseminated to authorities charged with disciplinary responsibility, unless required by law or the Code of Judicial Conduct.

(Amended effective January 15, 1990.)

★ Rule 3-111. Certification for retention election.

Intent:

To establish the guidelines which shall be used by the Council in certifying judges for retention election.

To provide meaningful and relevant information to the public to guide its decision on whether to retain a judge without compromising the self-improvement goal of the Performance Evaluation Program or the independence of the judiciary.

Applicability:

This rule applies to all judges and justices standing for retention election after November 1986.

Statement of the Rule:

(1) **Standards.** Each judge standing for retention election shall be evaluated as to his or her performance according to the standards for competence established by the Judicial Performance Evaluation Program.

(A) No judge or justice shall be determined to be uncertified unless he or she has been evalu-

ated on criteria which have been adopted and in effect for at least two years.

(B) The policies and procedures established by the Standing Oversight Committee shall define performance levels.

(C) The certification decision shall be based upon the overall performance of the judge on all criteria.

(2) Certification.

(A) The criteria and minimum competence levels established in the Judicial Performance Evaluation Program shall be the standards and minimum competence levels utilized in the process of certification.

(B) A judge scheduled to stand for retention election will receive a performance evaluation within two years prior to the election. The staff person assigned to the Judicial Performance Evaluation Program shall compile the individual judge's performance evaluation data as it relates to the minimum performance level. The staff person shall then report to the Council whether the judge has met the certification requirements. The Council shall then certify to the public whether the judge has met the certification requirements as measured by the Judicial Performance Evaluation Program.

(C) The decision as to the certification or non-certification of a judge shall be communicated to the judge by February 15th of the year in which the retention election occurs. The Council shall publish the certification or non-certification of judges standing for retention election by August 1st of the year of the election.

(3) **Notice and opportunity to be heard.** If a judge wishes to contest a certification decision of the Council, he or she shall give written notice to the Council within 10 days of receiving notification from the Council. The judge may then appear before the Council, in Executive Session, and present information to the Council which may then reconsider its decision. The judge shall have access to all information considered by the Council and the Council may consider other information relevant to the judge's performance in office.

(Amended effective January 15, 1990.)

Rule 3-112. Justice Court Standards Committee.

Intent:

To establish a Justice Court Standards Committee to assist the Council with its responsibility for certifying new justice courts and recertifying existing justice courts.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) **Establishment and composition of Committee.**

(A) There is established a Justice Court Standards Committee which is a standing committee of the Council as provided in Chapter One of this Code.

(B) The Board of Justice Court Judges shall appoint four justice court judges: two of whom are municipal judges, one from a rural area and one from an urban area; and two of whom are county judges, one from a rural area and one from an urban area. The League of Cities and Towns shall appoint two mayors, one of whom is from Utah, Davis, Weber or Salt Lake Counties and one of whom is from the remaining counties. The Association of Counties shall appoint two

(c) Under no circumstances shall the data collected or the results of the evaluation be used to discipline a judge or commissioner or be disseminated to authorities charged with disciplinary responsibility or responsibility for determining certification for reelection, reappointment or continued service.

(Repealed and reenacted effective December 13, 1991.)

Rule 3-111. Performance evaluation for certification of judges and commissioners.

Intent:

To establish a performance evaluation program to be used for the certification of judges and commissioners pursuant to Utah Code Ann. § 78-3-21(4)(b).

To establish the guidelines which shall be used by the Council in certifying judges for retention election or reappointment.

To establish guidelines which shall be used by the Council and presiding judges in retaining a court commissioner for continued service.

To provide meaningful and relevant information to the public and/or applicable appointing authority to guide its decision on whether to retain or reappoint judges or commissioners without compromising the self-improvement goal of the Judicial Performance Evaluation Program ("Program") or the independence of the judiciary.

Applicability:

This rule shall apply to all judges standing for retention election after November 1990, municipal justice court judges seeking reappointment and court commissioners.

Statement of the Rule:

(1) Objective.

(A) Each judge standing for retention election, or other judge or commissioner standing for reappointment or continued service, shall be evaluated and shall be entitled to certification if he/she complies with the standards set forth in this rule for each criterion as defined in this rule.

(B) Any judge or commissioner who fails to satisfy any of the standards set forth in this rule is deemed not entitled to certification. Any judge or commissioner deemed not entitled to certification may request a hearing before the Council. The Council may, after hearing if requested, within its sole discretion, grant certification based on written findings that it is in the best interests of the administration of justice.

(2) Criteria of performance. The following criteria shall be used to evaluate a judge or commissioner:

(A) Integrity — Factors considered shall include but are not limited to:

- (i) avoidance of impropriety and appearance of impropriety;
- (ii) freedom from personal bias;
- (iii) ability to decide issues based on the law and the facts without regard to the identity of the parties or counsel, the popularity of the decision, and without concern for or fear of criticism;
- (iv) impartiality of actions; and
- (v) compliance with the Code of Judicial Conduct.

(B) Knowledge and understanding of the law and judicial branch rules — Factors considered shall include but are not limited to:

- (i) the issuance of legally sound decisions;

- (ii) understanding of the substantive, procedural, and evidentiary law of the state;

- (iii) attentiveness to the factual and legal issues before the court; and

- (iv) the proper application of judicial precedents and other appropriate sources of authority.

(C) Ability to communicate — Factors considered shall include but are not limited to:

- (i) clarity of bench rulings and other oral communications;

- (ii) quality of written opinions with specific focus on clarity and logic, and the ability to explain clearly the facts of a case and the legal precedents at issue; and

- (iii) sensitivity to impact of demeanor and other nonverbal communications.

(D) Preparation, attentiveness, dignity and control over proceedings — Factors considered shall include but are not limited to:

- (i) courtesy to all parties and participants; and

- (ii) willingness to permit every person legally interested in a proceeding to be heard, unless precluded by law or rules of courts.

(E) Skills as a manager — Factors considered shall include but are not limited to:

- (i) devoting appropriate time to all pending matters;

- (ii) discharging administrative responsibilities diligently; and

- (iii) where responsibility exists for a calendar, knowledge of the number, age, and status of pending cases.

(F) Punctuality — Factors considered shall include but are not limited to:

- (i) the prompt disposition of pending matters; and

- (ii) meeting commitments on time and according to rules of the court.

(3) Standards of performance. The following standards of performance must be met to entitle a judge or commissioner to certification:

(A) Satisfactory Survey Score. Performance of each judge and commissioner (except justice court judges) shall be evaluated by an attorney survey for judicial certification. The Standing Committee on Judicial Performance Evaluation ("Committee") shall submit a proposed survey to the Council for its approval.

(i) Survey Subject Matter. Subjects inquired into by the survey shall be drawn from but need not include all of the criteria referenced in (2)(A), (2)(B), (2)(C), (2)(D), (2)(E) and (2)(F) of this rule.

(ii) General Retention Question. The survey shall include a general retention question as follows: "Taking everything into account, would you recommend the Judicial Council certify this judge or commissioner for retention?"

(iii) No evaluation shall be based upon a criterion which has not been adopted and in effect for at least two years. However, the methodology for measurement may change from year to year.

(iv) Survey Scoring. The survey shall be scored as follows:

(a) Each question (except the general retention question) in the certification portion of the attorney survey will have

five possible responses: Almost Always, Usually, Rarely, Never, or No Personal Knowledge. A favorable response is either Almost Always or Usually.

(b) Each question shall be scored by dividing the total number of favorable responses by the total number of all responses (excluding the "No Personal Knowledge" responses).

(c) The general retention question shall not be used in the calculation of survey scoring. In the event that a judge or commissioner is not certified and requests a hearing, response to the general retention question may be utilized by the judge, commissioner, or Council as a mitigating or aggravating factor.

(d) A satisfactory score is achieved for each question when the favorable responses computed in (b) above is 70% or greater.

(e) A judge's or commissioner's performance is satisfactory if:

(1) At least 75% of the questions on the certification portion of the survey have a satisfactory score as stated in (d) above; and

(2) The favorable responses to all the questions in the survey (except the general retention question) when divided by the total number of all responses (excluding "No Personal Knowledge" responses and general retention responses) is 70% or greater.

(B) Absence of Conduct Commission Sanction. Performance shall be evaluated based on the actions of the Judicial Conduct Commission. Performance is satisfactory if there has been no formal public sanction and no more than one private reprimand during the current term of office.

(C) Compliance with Time Standards. Performance shall be evaluated based on the timeliness of case dispositions. Case files, presiding judge reports, self reports and management reports may be used to measure performance as follows:

(i) Trial judges and commissioners.

(a) Case Under Advisement Standard: A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge or commissioner for final determination. Satisfactory performance is demonstrated if the trial judge or commissioner has not held more than six cases under advisement beyond 60 days after submission during the past two years and no case under advisement beyond 180 days during the past two years.

(b) Case Processing Time Standard: Beginning with the 1993 performance evaluation cycle, compliance with the case processing time standard established by the Council for not more than two years or less than one year prior to the evaluation shall demonstrate satisfactory performance. Data accumulated prior to December 31, 1991 may not be used.

(ii) Appellate judges. Case Processing Time Standard: After December 31, 1992, compliance with the case processing time

standard established by the Council shall demonstrate satisfactory performance.

(D) Compliance with Education Standards. Satisfactory performance is established if the minimum hour education requirements in effect during the term of office of the judge or commissioner and established by this Code have been met subject to the availability of in-state education programs.

(E) Satisfactory Self Certification. Satisfactory performance is established if the response of the judge or commissioner demonstrates the ability to serve based on medical considerations, case management, and performance in compliance with the Code of Judicial Conduct and the Code of Judicial Administration and if the Council finds the responsive information to be complete and correct.

(4) **Interim information.** Where intervening special circumstances such as absence from the bench or inadequate administrative support prohibit a judge from voluntarily complying with the time or education standards, the judge shall immediately notify, and provide documentation of the intervening circumstances, to the Council. The Council may waive application of either standard for a specified period of time upon a finding that compliance has not been or will not be achieved due to circumstances beyond the judge's control.

(5) **Judicial Council action.**

(A) The Council shall meet in a regularly scheduled meeting not later than February 15 of each even numbered year to determine if each judge or commissioner meets the standards of performance for each criterion as defined in this rule.

(B) The Council shall certify each judge standing for retention election or reappointment, and each commissioner who is entitled to certification under this rule. Written notice of the decision shall be provided to each judge or commissioner within 10 days after the Council's decision.

(C) Any judge or commissioner deemed not entitled to certification under this rule shall be notified of that decision within 10 days by the Council. Such judge or commissioner may request a hearing before the Council by filing a written request within 10 days after receiving notice of the Council's decision. The hearing shall be held within 20 days after receipt of the written request and such hearing shall be held in executive session.

(i) The judge or commissioner may provide explanation, information in mitigation or information to correct data previously provided to the Council. Information presented shall be directly responsive to the identified deficiency.

(ii) The Council may consider any other relevant information it deems appropriate in its sole discretion, including but not limited to factors in aggravation or mitigation, past performance evaluations, and other testimony.

(iii) In evaluating failure to comply with time or education standards, the Council shall consider workload, absence from the bench, inadequacy of administrative support or other unique circumstances identified by the judge which may have prohibited compliance. The Council may waive application of either standard upon a finding that compli-

ance has not been achieved due to circumstances beyond the judge's control.

(iv) The Council shall notify the judge or commissioner of the Council's decision in writing within 10 days after the hearing.

(v) If a judge or commissioner not entitled to certification fails to request such a hearing within the time allowed, the Council shall memorialize at its next regularly scheduled meeting that such judge or commissioner is not certified.

(D) The Council shall publish the certification decision for each judge standing for retention election by August 1 of the election year.

(E) The Council shall publish the certification decision for each judge seeking reappointment and shall provide a written notice of such decision to the appointing authority by August 1 of each even numbered year.

(F) The Council shall notify each presiding judge of the certification decision on every commissioner by June 1 of each even numbered year.

(6) Administration of the Program.

(A) The Standing Committee on Judicial Performance Evaluation shall:

(i) Provide to the Council a proposed schedule of activities and recommended procedures by which to administer the evaluation for certification by May 1 of each odd numbered year.

(ii) With the Council's approval, mail a schedule and procedure to all judges and commissioners subject to evaluation for certification.

(iii) Include in its annual report to the Council recommendations for the improvement of the certification evaluation program.

(B) Individual judges and commissioners shall be provided with evaluations under this rule every two years. Newly appointed judges shall be evaluated prior to their first retention election, but not sooner than after one year in office.

(C) Information collected from individuals concerning judicial performance shall be based on knowledge of the judge's performance during the current term of office or the commissioner's most recent two years of performance. Objective data collected shall be based on the judge's current term of office or the commissioner's most recent two years of performance.

(D) Provisions for confidentiality shall be established such that performance data on individual judges or commissioners and the source of particular information cannot be identified except as required to comply with this rule.

(E) Data submitted to the Council for certification shall be tabulated by survey question or type of information by judge or commissioner, by court level and by geographical region as defined by the Committee.

(i) Data under this section shall be made available to the Council by January 1 of each even numbered year.

(ii) Individual judges and commissioners shall receive their individual results a minimum of 20 days prior to submission to the Council. Judges and commissioners must provide comments on the results to the Council at least five working days prior to Council consideration.

(iii) Data collected by survey for certification purposes shall be reported only as satis-

factory or unsatisfactory performance as defined in this rule.

(iv) The Council and individual judges or commissioners shall be provided with summary data and results without individual identification for each survey question or type of information for each court level and each geographical area as defined by the Committee.

(v) The Council shall make information collected under this section on judges standing for retention election or reappointment available to the public prior to retention election or reappointment, and on commissioners, in the same form which was used by the Council to make its certification decision. Information not used for certification by the Council shall not be available to the public.

(Repealed and reenacted effective December 13, 1991.)

Rule 3-112. Justice Court Standards Committee. Intent:

To establish a Justice Court Standards Committee to assist the Council with its responsibility for certifying new justice courts and recertifying existing justice courts.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) Establishment and composition of Committee.

(A) There is established a Justice Court Standards Committee which is a standing committee of the Council as provided in Chapter One of this Code.

(B) The Board of Justice Court Judges shall appoint four justice court judges: two of whom are municipal judges, one from a rural area and one from an urban area; and two of whom are county judges, one from a rural area and one from an urban area. The League of Cities and Towns shall appoint two mayors, one of whom is from Utah, Davis, Weber or Salt Lake Counties and one of whom is from the remaining counties. The Association of Counties shall appoint two commissioners, one of whom is from Utah, Davis, Weber or Salt Lake Counties and one of whom is from the remaining counties. The Bar Commission shall appoint two representatives, one of whom is from Utah, Davis, Weber or Salt Lake Counties and one of whom is from the remaining counties. The Presiding Officer of the Council shall appoint a circuit court judge.

(C) Members shall be appointed for a two year term and may be reappointed upon completion of the term.

(D) The Presiding Officer of the Council shall appoint a Committee chair from the members of the Committee.

(E) The Administrative Office shall serve as secretariat to the Committee.

(2) Responsibilities of Committee. The Committee shall be responsible for the following:

(A) To recommend to the Council

(i) minimum guidelines which demonstrate the need for a justice court, and which take into account the population, the number of case filings, the public convenience, the availability of law enforcement agencies

(c) facilitating the performance of administrative responsibilities of other judges and commissioners; and

(d) effectively working with court staff.

(5) Self-improvement evaluation process.

(A) The evaluation process shall be composed of acceptable professionally recognized methods of data collection which may include surveys, on-site visits, caseload management data analysis and personal interviews. Self-improvement evaluations shall be obtained from multiple sources to provide balanced information on an individual judge or commissioner.

(B) Data collection for self-improvement evaluations shall be conducted as follows:

(i) Data collection instruments shall be developed to permit measurement by individual court levels.

(ii) Data collection instruments will identify information which is to be used solely for self-improvement.

(C) The self-improvement performance evaluations shall provide individual judges and commissioners with evaluation results every two years during their terms of office. Newly appointed judges or commissioners shall be evaluated once after their first year in office and again prior to their initial retention election or reappointment.

(D) Information collected from individuals concerning the self-improvement evaluation shall be based on knowledge of the judge's performance during the current term of office or the commissioner's most recent 2 years of performance. Objective data collected shall be based on the judge's current term of office or the commissioner's most recent 2 years of performance.

(E) Provisions for confidentiality shall be established such that performance data on individual judges and commissioners and the source of information cannot be identified except as needed to comply with this rule.

(F) Dissemination and uses of self-improvement evaluation.

(i) Dissemination of results and data from the Program shall be consistent with and conform to the goal of self-improvement of the individual judge, commissioner and the judiciary as a whole.

(ii) Data collected for self-improvement and improvement of the judiciary shall be tabulated by question in the case of survey and by source and type where other methodologies are employed. The data shall be disseminated as follows:

(a) Individual data and results shall be provided only to the judge and commissioner evaluated, together with the averages for each judge's or commissioner's court level for each judge's or commissioner's geographic area defined by the Committee.

(b) Summary data and results, without individual identification, shall be provided to the Council and Boards of Judges by court level and within geographic areas defined by the Committee.

(c) Under no circumstances shall the data collected or the results of the evaluation be used to discipline a judge or commissioner or be disseminated to au-

thorities charged with disciplinary responsibility or responsibility for determining certification for reelection, reappointment or continued service.

(Repealed and reenacted effective December 13, 1991; amended effective May 1, 1993; May 15, 1994.)

Rule 3-111. Performance evaluation for certification of judges and commissioners.

Intent:

To establish a performance evaluation program to be used for the certification of judges and commissioners pursuant to Utah Code Ann. Section 78-3-21(4)(b).

To establish the guidelines which shall be used by the Council in certifying judges for retention election or reappointment.

To establish guidelines which shall be used by the Council and presiding judges in retaining a court commissioner for continued service.

To provide meaningful and relevant information to the public and/or applicable appointing authority to guide its decision on whether to retain or reappoint judges or commissioners without compromising the self-improvement goal of the Judicial Performance Evaluation Program ("Program") or the independence of the judiciary.

Applicability:

This rule shall apply to all judges standing for retention election after November 1990, municipal justice court judges seeking reappointment and court commissioners.

Statement of the Rule:

(1) Objective.

(A) Each judge standing for retention election, or other judge or commissioner standing for reappointment or continued service, shall be evaluated and shall be entitled to certification if he/she complies with the standards set forth in this rule for each criterion as defined in this rule.

(B) Any judge or commissioner who fails to satisfy any of the standards set forth in this rule is deemed not entitled to certification. Any judge or commissioner deemed not entitled to certification may request a hearing before the Council. The Council may, after hearing if requested, within its sole discretion, grant certification based on written findings that it is in the best interests of the administration of justice.

(2) Criteria of performance. The following criteria shall be used to evaluate a judge or commissioner:

(A) Integrity — Factors considered shall include but are not limited to:

(i) avoidance of impropriety and appearance of impropriety;

(ii) freedom from personal bias;

(iii) ability to decide issues based on the law and the facts without regard to the identity of the parties or counsel, the popularity of the decision, and without concern for or fear of criticism;

(iv) impartiality of actions; and

(v) compliance with the Code of Judicial Conduct.

(B) Knowledge and understanding of the law and judicial branch rules — Factors considered shall include but are not limited to:

(i) the issuance of legally sound decisions;

1994

d with disciplinary responsibility for deterioration for reelection, reappointed service.
 tive December 13, 1991; 1993; May 15, 1994.)

valuation for certification and commissioners.

evaluation program to of judges and commissioners Code Ann. Section

which shall be used by es for retention election

ch shall be used by the s in retaining a court service.

relevant information to appointing authority to retain or reappoint out compromising the Judicial Performance am") or the indepen-

judges standing for re-er 1990, municipal just-appointment and court

g for retention election, oner standing for reapp-er service, shall be evaluated to certification if standards set forth in as defined in this rule. nissioner who fails to ds set forth in this rule ertification. Any judge ot entitled to certifica-ng before the Council. hearing if requested, n, grant certification ; that it is in the best ration of justice.

se. The following crite-judge or commissioner: s considered shall in-l to:

propriety and appear-

ersonal bias; le issues based on the out regard to the iden-counsel, the popularity without concern for or

actions; and the Code of Judicial

erstanding of the law — Factors considered limited to: egally sound decisions;

- (ii) understanding of the substantive, procedural, and evidentiary law of the state;
- (iii) attentiveness to the factual and legal issues before the court; and
- (iv) the proper application of judicial precedents and other appropriate sources of authority.

(C) Ability to communicate — Factors considered shall include but are not limited to:

- (i) clarity of bench rulings and other oral communications;
- (ii) quality of written opinions with specific focus on clarity and logic, and the ability to explain clearly the facts of a case and the legal precedents at issue; and
- (iii) sensitivity to impact of demeanor and other nonverbal communications.

(D) Preparation, attentiveness, dignity and control over proceedings — Factors considered shall include but are not limited to:

- (i) courtesy to all parties and participants; and
- (ii) willingness to permit every person legally interested in a proceeding to be heard, unless precluded by law or rules of courts.

(E) Skills as a manager — Factors considered shall include but are not limited to:

- (i) devoting appropriate time to all pending matters;
- (ii) discharging administrative responsibilities diligently; and
- (iii) where responsibility exists for a calendar, knowledge of the number, age, and status of pending cases.

(F) Punctuality — Factors considered shall include but are not limited to:

- (i) the prompt disposition of pending matters; and
- (ii) meeting commitments on time and according to rules of the court.

(3) **Standards of performance.** The following standards of performance must be met to entitle a judge or commissioner to certification:

(A) **Satisfactory Survey Score.** Performance of each judge and commissioner (except justice court judges) shall be evaluated by an attorney survey for judicial certification. The Standing Committee on Judicial Performance Evaluation ("Committee") shall submit a proposed survey to the Council for its approval.

(i) **Survey Subject Matter.** Subjects inquired into by the survey shall be drawn from but need not include all of the criteria referenced in (2)(A), (2)(B), (2)(C), (2)(D), (2)(E) and (2)(F) of this rule.

(ii) **General Retention Question.** The survey shall include a general retention question as follows: "Taking everything into account, would you recommend the Judicial Council certify this judge or commissioner for retention?"

(iii) No evaluation shall be based upon a criterion which has not been adopted and in effect for at least two years. However, the methodology for measurement may change from year to year.

(iv) **Survey Scoring.** The survey shall be scored as follows:

- (a) Each question (except the general retention question) in the certification portion of the attorney survey will have

six possible responses: Excellent, More Than Adequate, Adequate, Less Than Adequate, Inadequate, or No Personal Knowledge. A favorable response is Excellent, More Than Adequate or Adequate.

(b) Each question shall be scored by dividing the total number of favorable responses by the total number of all responses (excluding the "No Personal Knowledge" responses).

(c) The general retention question shall not be used in the calculation of survey scoring. In the event that a judge or commissioner is not certified and requests a hearing, response to the general retention question may be utilized by the judge, commissioner, or Council as a mitigating or aggravating factor.

(d) A satisfactory score is achieved for each question when the favorable responses computed in (b) above is 70% or greater.

(e) A judge's or commissioner's performance is satisfactory if:

(1) At least 75% of the questions on the certification portion of the survey have a satisfactory score as stated in (d) above; and

(2) The favorable responses to all the questions in the survey (except the general retention question) when divided by the total number of all responses (excluding "No Personal Knowledge" responses and general retention responses) is 70% or greater.

(B) **Absence of Conduct Commission Sanction.** Performance shall be evaluated based on the actions of the Judicial Conduct Commission. Performance is satisfactory if there has been no formal public sanction and no more than one private reprimand during the current term of office.

(C) **Case Under Advisement Standard.** A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge or commissioner for final determination. Satisfactory performance is demonstrated if the trial judge or commissioner has not held more than 6 cases under advisement beyond 60 days after submission during the past 2 years and no case under advisement beyond 180 days during the past 2 years.

(D) **Compliance with Education Standards.** Satisfactory performance is established if the minimum hour education requirements in effect during the term of office of the judge or commissioner and established by this Code have been met subject to the availability of in-state education programs.

(E) **Satisfactory Self Certification.** Satisfactory performance is established if the response of the judge or commissioner demonstrates the ability to serve based on medical considerations, case management, and performance in compliance with the Code of Judicial Conduct and the Code of Judicial Administration and if the Council finds the responsive information to be complete and correct.

(4) **Interim information.** Where intervening special circumstances such as absence from the bench or inadequate administrative support prohibit a judge

1994

from voluntarily complying with the time or education standards, the judge shall immediately notify, and provide documentation of the intervening circumstances, to the Council. The Council may waive application of either standard for a specified period of time upon a finding that compliance has not been or will not be achieved due to circumstances beyond the judge's control.

(5) Judicial Council action.

(A) The Council shall meet in a regularly scheduled meeting not later than February 15 of each even numbered year to determine if each judge or commissioner meets the standards of performance for each criterion as defined in this rule. The Judicial Council may determine that a newly appointed judge or commissioner is entitled to certification after the judge or commissioner has been the subject of one attorney survey described in paragraph (3)(A) above. The Judicial Council may determine that a newly appointed judge or commissioner is not entitled to certification only after the judge or commissioner has been the subject of at least two attorney surveys.

(B) The Council shall certify each judge standing for retention election or reappointment, and each commissioner who is entitled to certification under this rule. Written notice of the decision shall be provided to each judge or commissioner within 10 days after the Council's decision.

(C) Any judge or commissioner deemed not entitled to certification under this rule shall be notified of that decision within 10 days by the Council. Such judge or commissioner may request a hearing before the Council by filing a written request within 10 days after receiving notice of the Council's decision. The hearing shall be held within 20 days after receipt of the written request and such hearing shall be held in executive session.

(i) The judge or commissioner may provide explanation, information in mitigation or information to correct data previously provided to the Council. Information presented shall be directly responsive to the identified deficiency.

(ii) The Council may consider any other relevant information it deems appropriate in its sole discretion, including but not limited to factors in aggravation or mitigation, past performance evaluations, and other testimony.

(iii) In evaluating failure to comply with time or education standards, the Council shall consider workload, absence from the bench, inadequacy of administrative support or other unique circumstances identified by the judge which may have prohibited compliance. The Council may waive application of either standard upon a finding that compliance has not been achieved due to circumstances beyond the judge's control.

(iv) The Council shall notify the judge or commissioner of the Council's decision in writing within 10 days after the hearing.

(v) If a judge or commissioner not entitled to certification fails to request such a hearing within the time allowed, the Council shall memorialize at its next regularly scheduled meeting that such judge or commissioner is not certified.

(D) The Council shall publish the certification decision for each judge standing for retention election by August 1 of the election year.

(E) The Council shall publish the certification decision for each judge seeking reappointment and shall provide a written notice of such decision to the appointing authority by August 1 of each even numbered year.

(F) The Council shall notify each presiding judge of the certification decision on every commissioner by June 1 of each even numbered year. Upon entry of a final decision not to certify a commissioner, the Council shall remove the commissioner from office.

(6) Administration of the program.

(A) The Standing Committee on Judicial Performance Evaluation shall:

(i) Provide to the Council a proposed schedule of activities and recommended procedures by which to administer the evaluation for certification by May 1 of each odd numbered year.

(ii) With the Council's approval, mail a schedule and procedure to all judges and commissioners subject to evaluation for certification.

(iii) Include in its annual report to the Council recommendations for the improvement of the certification evaluation program.

(B) (i) Individual judges and commissioners shall be evaluated under this rule every 2 years. Newly appointed judges and commissioners shall be evaluated once after their first year in office and again prior to their initial retention election or reappointment.

(ii) If a judge between March 1 and July 1 of the year prior to the judge's retention election or a commissioner at any time states in writing to the Judicial Council his or her intent not to continue in office beyond the close of the calendar year in which the judge or commissioner is scheduled for retention election or reappointment, the Judicial Council shall not include the judge or commissioner within the list of judges and commissioners who are the subject of the next attorney survey. If the judge or commissioner remains in office contrary to his or her written commitment not to remain in office, the Judicial Council shall determine that the judge or commissioner is not entitled to certification for retention election or reappointment.

(C) Information collected from individuals concerning judicial performance shall be based on knowledge of the judge's performance during the current term of office or the commissioner's most recent 2 years of performance. Objective data collected shall be based on the judge's current term of office or the commissioner's most recent 2 years of performance.

(D) Provisions for confidentiality shall be established such that performance data on individual judges or commissioners and the source of particular information cannot be identified except as required to comply with this rule.

(E) Data submitted to the Council for certification shall be tabulated by survey question or type of information by judge or commissioner, by court level and by geographical region as defined by the Committee.

1094

ish the certification
ding for retention
election year.

sh the certification
ing reappointment
notice of such deci-
sion by August 1 of

ify each presiding
sion on every com-
men numbered year.
on not to certify a
ll remove the com-

ogram.
ee on Judicial Per-

uncil a proposed
recommended pro-
minister the evalua-
May 1 of each odd

approval, mail a
to all judges and
evaluation for cer-

ual report to the
for the improve-
valuation program.
nd commissioners

this rule every 2
idges and commis-
d once after their
gain prior to their
or reappointment.

March 1 and July 1
ge's retention elec-
any time states in
ncil his or her in-
re beyond the close

which the judge or
for retention elec-
e Judicial Council
e or commissioner
nd commissioners

next attorney sur-
ssioner remains in
r written commit-
ffice, the Judicial
that the judge or
ed to certification

reappointment.
n individuals con-
shall be based on
mance during the
nmissioner's most

Objective data col-
lege's current term
's most recent 2

ality shall be es-
e data on individ-
und the source of
be identified ex-
th this rule.

uncil for certifica-
y question or type
issioner, by court
on as defined by

(i) Data under this section shall be made
available to the Council by January 1 of each
even numbered year.

(ii) Individual judges and commissioners
shall receive their individual results a mini-
mum of 20 days prior to submission to the
Council. Judges and commissioners must
provide comments on the results to the
Council at least 5 working days prior to
Council consideration.

(iii) Data collected by survey for certifica-
tion purposes shall be reported only as satis-
factory or unsatisfactory performance as de-
fined in this rule.

(iv) The Council and individual judges or
commissioners shall be provided with sum-
mary data and results without individual
identification for each survey question or
type of information for each court level and
each geographical area as defined by the
Committee.

(v) The Council shall make information
collected under this section on judges stand-
ing for retention election or reappointment
available to the public prior to retention
election or reappointment, and on commis-
sioners, in the same form which was used by
the Council to make its certification deci-
sion. Information not used for certification
by the Council shall not be available to the
public.

(Repealed and reenacted effective December 13, 1991;
amended effective March 12, 1992; May 1, 1993; May
15, 1994.)

Rule 3-112. Justice Court Standards Committee. **Intent:**

To establish the responsibility for certifying new
justice courts and recertifying existing justice courts.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) **Responsibilities of Justice Court Standards
Committee.** The Committee shall be responsible for
the following:

(A) To recommend to the Council:

(i) minimum guidelines which demon-
strate the need for a justice court, and which
take into account the population, the num-
ber of case filings, the public convenience,
the availability of law enforcement agencies
and court support services, the proximity of
other courts and other factors, and

(ii) operational standards for statutorily
required support services such as public fa-
cilities, clerical support, bailiff services,
prosecution and indigent defense services.

(B) To recommend to the Council the creation
and recertification of justice courts.

(C) To recommend to the Council procedures
for reviewing requests for waivers or extensions
of time to meet guidelines or standards.

(2) **Adoption and review of standards.**

(A) Proposed minimum guidelines for estab-
lishing the need for court and operational stan-
dards shall be distributed for comment to affected
agencies and organizations before submission to
the Council for approval.

(B) Operational standards shall be reviewed
and updated every two years, beginning in 1992.

(3) **Publication.** Guidelines for establishing the
need for a court, operational standards and the proce-
dures for requesting waivers or extensions of time to
meet the standards shall be published as an appendix
to this Code.

(Added effective January 15, 1990; amended effective
May 1, 1993.)

Rule 3-113. Senior Judges.

Intent:

To provide for the certification of senior judges and
active senior judges.

To establish the responsibility to provide for sup-
port services for active senior judges.

To provide for the compensation of active senior
judges.

Applicability:

This rule shall apply to judicial employees and to
senior judges and active senior judges of courts of
record.

Statement of the Rule:

(1) **Certification.**

(A) Former justices and judges of courts of
record who desire to be designated by the Council
as senior justices, senior judges or active senior
judges shall submit an application to the Council
on a form provided by the state court administra-
tor verifying compliance with the qualifications
of office set forth in Supreme Court Rule 11-201.

(B) The Council shall consider all applications
received, and may certify those who conform to
the qualifications of office.

(2) **Support services.**

(A) The court executive of the court in which
an active senior judge is serving shall make
available clerical, stenographic, court reporter
and bailiff services as needed in the performance
of the judge's official duties.

(B) The court executive of the court in which
an active senior judge is serving shall execute
the necessary notice of appointment for the case
or matters to which the judge has been assigned.

(C) The court executive of the district in which
an active senior judge resides shall provide the
following assistance as needed:

- (i) secretarial services;
- (ii) mail services;
- (iii) files and court documents;
- (iv) travel arrangements; and
- (v) preparation of reimbursement vouch-
ers.

(D) Active senior judges shall be provided with
a current set of the soft cover edition of the Utah
Code and a subscription to Utah Advance Re-
ports and Annotations, as provided by Rule
3-413.

(3) **Compensation.** Active senior judges shall be
compensated at the rate and for the services and du-
ties as set forth herein.

(A) Compensation for the performance of judi-
cial duties on assignment and other duties pursu-
ant to this Code shall be at an hourly rate equal
to the hourly rate of a district judge.

(B) Compensation shall not include any form
of benefits, i.e., state retirement contributions,
medical or life insurance premiums, etc.

1994

(b) meeting commitments on time and according to rules of the court; and

(c) compliance with the case processing time standard established by the Council.

(vii) Service to the profession and the public — Factors considered may include but are not limited to:

(a) attendance at and participation in judicial and continuing legal education programs;

(b) consistent with the Code of Judicial Conduct, participation in organizations which are devoted to improving the justice system;

(c) consistent with the highest principles of the law, ensuring that the court is serving the public and the justice system to the best of its ability and in such a manner as to instill confidence in the court system; and

(d) service within the organizations of the judicial branch of government and in leadership positions within the judicial branch of government, such as presiding judge, Judicial Council, Boards of Judges, and standing and ad hoc committees.

(viii) Effectiveness in working with other judges, commissioners and court personnel — Factors considered may include but are not limited to:

(a) when part of a multi-judge panel, exchanging ideas and opinions with other judges during the decision-making process;

(b) critiquing the work of colleagues;

(c) facilitating the performance of administrative responsibilities of other judges and commissioners; and

(d) effectively working with court staff.

(5) Self-improvement evaluation process.

(A) The evaluation process shall be composed of acceptable professionally recognized methods of data collection which may include surveys, onsite visits, caseload management data analysis and personal interviews. Self-improvement evaluations shall be obtained from multiple sources to provide balanced information on an individual judge or commissioner.

(B) Data collection for self-improvement evaluations shall be conducted as follows:

(i) Data collection instruments shall be developed to permit measurement by individual court levels.

(ii) Data collection instruments will identify information which is to be used solely for self-improvement.

(C) The self-improvement performance evaluations shall provide individual judges and commissioners with evaluation results every two years during their terms of office. Newly appointed judges or commissioners shall be evaluated once after their first year in office and again prior to their initial retention election or reappointment.

(D) Information collected from individuals concerning the self-improvement evaluation shall be based on knowledge of the judge's performance during the current term of office or the commissioner's most recent 2 years of performance. Objective data collected shall be based on the judge's current term of office or the commissioner's most recent 2 years of performance.

(E) Provisions for confidentiality shall be established such that performance data on individual judges and commissioners and the source of information cannot be identified except as needed to comply with this rule.

(F) Dissemination and uses of self-improvement evaluation.

(i) Dissemination of results and data from the Program shall be consistent with and conform to the goal of self-improvement of the individual judge, commissioner and the judiciary as a whole.

(ii) Data collected for self-improvement and improvement of the judiciary shall be tabulated by question in the case of survey and by source and type where other methodologies are employed. The data shall be disseminated as follows:

(a) Individual data and results shall be provided only to the judge or commissioner evaluated, together with the averages for each judge's or commissioner's geographic region.

(b) Summary data and results, without individual identification, shall be provided to the Council and Boards of Judges by court level and within geographic region.

(c) Under no circumstances shall the data collected or the results of the evaluation be used to discipline a judge or commissioner or be disseminated to authorities charged with disciplinary responsibility or responsibility for determining certification for reelection, reappointment or continued service.

(iii) Geographic regions are:

(a) Region 1: Judicial Districts 1, 5, 6, 7, and 8;

(b) Region 2: Judicial District 2;

(c) Region 3: Judicial District 3; and

(d) Region 4: Judicial District 4.

(Repealed and reenacted effective December 13, 1991; amended effective May 1, 1993; May 15, 1994; April 15, 1995.)

Rule 3-111. Performance evaluation for certification of judges and commissioners.

Intent:

To establish a performance evaluation program to be used for the certification of judges and commissioners pursuant to Utah Code Ann. §78-3-21(4).

To establish the guidelines which shall be used by the Council in certifying judges for retention election or reappointment.

To establish guidelines which shall be used by the Council and presiding judges in retaining a court commissioner for continued service.

To provide meaningful and relevant information to the public and applicable appointing authority to guide its decision on whether to retain or reappoint judges or commissioners without compromising the self-improvement goal of the Judicial Performance Evaluation Program or the independence of the judiciary.

Applicability:

This rule shall apply to all judges standing for retention election after November 1990, municipal justice court judges seeking reappointment and court commissioners, except that Paragraph (3)(A) shall apply only to the judges and commissioners of the courts of record.

Paragraphs with more limited applicability shall apply as specified in the paragraph.

Statement of the Rule:

(1) Objective.

(A) Each judge standing for retention election, or other judge or commissioner standing for reappointment or continued service, shall be evaluated for compliance with the standards set forth in this rule for each criterion as defined in this rule.

1996

(B) A judge or commissioner is entitled to certification upon compliance with the standards for each criterion set forth in this rule. Any judge or commissioner who fails to satisfy any of the standards for a criterion set forth in this rule is deemed not entitled to certification. Any judge or commissioner deemed not entitled to certification may request a hearing before the Council. The Council may, after hearing if requested, within its sole discretion, grant certification based on written findings that it is in the best interests of the administration of justice.

(C) No evaluation shall be based upon a criterion which has not been adopted and in effect for at least two years. However, the methodology for measurement may change from year to year.

(2) **Criteria of performance.** The following criteria shall be used to evaluate a judge or commissioner:

(A) **Integrity** — Factors considered shall include but are not limited to:

- (i) avoidance of impropriety and appearance of impropriety;
- (ii) freedom from personal bias;
- (iii) ability to decide issues based on the law and the facts without regard to the identity of the parties or counsel, the popularity of the decision, and without concern for or fear of criticism;
- (iv) impartiality of actions; and
- (v) compliance with the Code of Judicial Conduct.

(B) **Knowledge and understanding of the law and judicial branch rules** — Factors considered shall include but are not limited to:

- (i) the issuance of legally sound decisions;
- (ii) understanding of the substantive, procedural, and evidentiary law of the state;
- (iii) attentiveness to the factual and legal issues before the court; and
- (iv) the proper application of judicial precedents and other appropriate sources of authority.

(C) **Ability to communicate** — Factors considered shall include but are not limited to:

- (i) clarity of bench rulings and other oral communications;
- (ii) quality of written opinions with specific focus on clarity and logic, and the ability to explain clearly the facts of a case and the legal precedents at issue; and
- (iii) sensitivity to impact of demeanor and other nonverbal communications.

(D) **Preparation, attentiveness, dignity and control over proceedings** — Factors considered shall include but are not limited to:

- (i) courtesy to all parties and participants; and
- (ii) willingness to permit every person legally interested in a proceeding to be heard, unless precluded by law or rules of courts.

(E) **Skills as a manager** — Factors considered shall include but are not limited to:

- (i) devoting appropriate time to all pending matters;
- (ii) discharging administrative responsibilities diligently; and
- (iii) where responsibility exists for a calendar, knowledge of the number, age, and status of pending cases.

(F) **Punctuality** — Factors considered shall include but are not limited to:

- (i) the prompt disposition of pending matters; and
- (ii) meeting commitments on time and according to rules of the court.

(3) **Standards of performance.** The following standards of performance must be met to entitle a judge or commissioner to certification:

(A) **Satisfactory survey score.** The Council shall measure satisfactory performance of each judge and commissioner of the courts of record by a sample survey of the attorneys appearing before the judge or commissioner during the preceding two years or such shorter period for which the judge or commissioner is being evaluated. The Standing Committee on Judicial Performance Evaluation shall submit a proposed survey and any proposed amendments to the Council for approval.

(i) **Survey subject matter.** Subjects inquired into by the survey shall be drawn from but need not include all of the criteria referenced in paragraph (2) of this rule.

(ii) **Survey questions.** The survey shall be divided into two parts: questions to be used in the certification of a judge or commissioner; and questions for the self improvement of the judge or commissioner. Only the questions approved by the Council for use in the certification section will be used for certification purposes. All questions will be used for self improvement purposes. The survey shall include a general retention question, which is part of the certification section, as follows: "Taking everything into account, would you recommend the Judicial Council certify this judge or commissioner for retention?"

(iii) **Survey scoring.** The survey shall be scored as follows:

(a) Each question, except the general retention question, of the attorney survey will have six possible responses: Excellent, More Than Adequate, Adequate, Less Than Adequate, Inadequate, or No Personal Knowledge. A favorable response is Excellent, More Than Adequate or Adequate.

(b) Each question shall be scored by dividing the total number of favorable responses by the total number of all responses, excluding the "No Personal Knowledge" responses.

(c) The general retention question shall not be used in the calculation of survey scoring. In the event that a judge or commissioner is not certified and requests a hearing, response to the general retention question may be utilized by the judge, commissioner, or Council as a mitigating or aggravating factor.

(d) A satisfactory score is achieved for each question when the favorable responses computed in (b) above is 70% or greater.

(e) A judge's or commissioner's performance is satisfactory if:

(1) At least 75% of the questions on the certification portion of the survey, except the general retention question, have a satisfactory score as stated in (d) above; and

(2) The favorable responses to the certification questions in the survey (except the general retention question) when divided by the total number of all responses to the certification questions (excluding "No Personal Knowledge" responses and general retention responses) is 70% or greater.

(iv) **Surveyor.** As used in this rule, the term "Surveyor" means the organization or individual awarded a contract through procedures established

by the state procurement code to survey lawyers regarding the performance of judges.

(v) **Survey respondents.** The clerk for the judge or commissioner shall identify as potential respondents all lawyers who have appeared before the judge or commissioner at a hearing or trial during the preceding two year period or such shorter period for which the judge or commissioner is being evaluated. The judge or commissioner shall not review the list of potential respondents. A lawyer who has been appointed as a judge or commissioner shall not be a respondent in the survey.

(vi) **Exclusion from survey respondents.** By certifying that one or more of the following conditions applies, the judge or commissioner may exclude an attorney from the list of respondents: The judge or commissioner

- (a) has referred the lawyer to the Utah State Bar for discipline,
- (b) has found the lawyer in contempt of court,
- (c) has sanctioned the lawyer pursuant to rules of procedure,
- (d) has presided in a civil or criminal proceeding to which the lawyer is a party, or
- (e) has been the subject of an affidavit of bias or prejudice under Utah Rule of Civil Procedure 63 or Utah Rule of Criminal Procedure 29.

(vii) **Number of survey respondents.** For each justice, judge, or commissioner who is the subject of a survey, the Surveyor shall identify 180 respondents or all attorneys appearing before the judge or commissioner whichever is less.

(viii) **Factors in selecting respondents; response rate.** In selecting respondents from potential respondents, the Surveyor should favor attorneys with a greater number of appearances and attorneys with more recent appearances, and the Surveyor should attempt to limit the number of survey questionnaires to which an attorney is asked to respond to 12. The Surveyor may balance these factors in assigning respondents to particular judges or commissioners. The Surveyor should pursue a response rate of 70% or more for each judge or commissioner. The goals of this subparagraph are advisory only and failure to meet the goals shall not invalidate the survey.

(B) Absence of Conduct Commission sanction.

For private reprimands, performance shall be evaluated based on the actions of the Judicial Conduct Commission. For public reprimands and other public sanctions, performance shall be evaluated based on the actions of the Supreme Court after the recommendation of the Judicial Conduct Commission. Performance is satisfactory if there has been no public sanction during the current term of office and no more than one private reprimand during the prior two years. The Council shall measure satisfactory performance by the self declaration of the judge or commissioner or by review of records maintained by the Supreme Court. In accordance with § 78-7-30(3), the Judicial Conduct Commission shall disclose to the Council upon request the existence of any private reprimand.

(C) **Case under advisement standard.** A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge or commissioner for final determination. The Council shall measure satisfactory performance during the prior two years by the self declaration of the judge or commissioner or by review of the records of the court.

(i) A justice of the Supreme Court whose term of office expires in 1998 or thereafter demonstrates satisfactory performance by circulating not more than six principal opinions more than 180 days after submission.

(ii) A judge of the Court of Appeals whose term of office expires in 1998 or thereafter demonstrates satisfactory performance by:

(a) circulating not more than six principal opinions more than 180 days after submission; and

(b) achieving a final average time to circulation of a principal opinion of not more than 120 days after submission.

(iii) A trial court judge or commissioner demonstrates satisfactory performance by holding:

(a) 6 or fewer cases under advisement beyond 60 days after submission; and

(b) no case under advisement beyond 180 days after submission.

(D) **Compliance with education standards.** Satisfactory performance is established if the minimum education requirements established by this Code have been met subject to the availability of in-state education programs. The Council shall measure satisfactory performance during the prior two years by the self declaration of the judge or commissioner or by review of records of the state court administrator.

(E) Substantial compliance with Code of Judicial Conduct and the Code of Judicial Administration.

Satisfactory performance is established if the response of the judge or commissioner demonstrates substantial compliance with the Code of Judicial Conduct and the Code of Judicial Administration and if the Council finds the responsive information to be complete and correct.

(F) **Physical and mental competence.** Satisfactory performance is established if the response of the judge or commissioner demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.

(4) Judicial Council action.

(A) The Council shall meet in a regularly scheduled meeting not later than February 15 of each even numbered year to determine if each judge or commissioner meets the standards of performance for each criterion as defined in this rule. The meeting shall be conducted in executive session called in compliance with the Utah Open and Public Meetings Act.

(B) The Council may determine that a judge subject to retention election after the abbreviated initial term of office is entitled to certification based upon the attorney survey conducted after the first 12 months in office and the other requirements of certification. The Council may determine that a judge subject to retention election after the abbreviated initial term of office is not entitled to certification based upon the second attorney survey conducted during the initial term of office.

(C) The Council shall certify each judge standing for retention election or reappointment and each commissioner who is entitled to certification under this rule. Written notice of the decision shall be provided to each judge or commissioner within 10 days after the Council's decision.

(D) Any judge or commissioner deemed not entitled to certification under this rule shall be notified of that decision within 10 days by the Council. Such judge or commissioner may request a hearing before the Council

1996

by filing a written request within 10 days after receiving notice of the Council's decision. The hearing shall be held within 20 days after receipt of the written request and such hearing shall be held in executive session.

(i) The judge or commissioner may provide explanation, information in mitigation or information to correct data previously provided to the Council. Information presented shall be directly responsive to the identified deficiency.

(ii) The Council may consider any other relevant information it deems appropriate in its sole discretion, including but not limited to factors in aggravation or mitigation, past performance evaluations, and other testimony.

(iii) In evaluating failure to comply with a standard, the Council shall consider workload, absence from the bench, inadequacy of administrative support or other extenuating circumstances identified by the judge which may have prohibited compliance.

(iv) The Council shall notify the judge or commissioner of the Council's decision in writing within 10 days after the hearing.

(v) If a judge or commissioner not entitled to certification fails to request such a hearing within the time allowed, the Council shall memorialize at its next regularly scheduled meeting that such judge or commissioner is not certified.

(E) For each judge standing for retention election, the Council shall publish at least once the certification decision and the information described in this subparagraph in a newspaper of general circulation in the judicial district or districts where the judge is subject to retention election not less than one week before the election and not more than one month before the election. In addition to the certification decision, the Council shall publish:

(i) a statement identifying whether the judge received a satisfactory score on the attorney survey when measured as required by this rule.

(ii) a statement identifying the number of public reprimands and other public sanctions implemented by the Supreme Court after recommendation by the Judicial Conduct Commission;

(iii) a statement identifying two or more private sanctions during the previous two years implemented by the Judicial Conduct Commission;

(iv) a statement identifying whether the judge complies with the cases under advisement standard;

(v) a statement identifying the number of hours of approved judicial education that the judge completed and whether the judge met the minimum number of hours required by the Council;

(vi) a statement indicating whether the judge submitted a certification of substantial compliance with the Code of Judicial Conduct and the Code of Judicial Administration; and

(vii) a statement indicating whether the judge submitted a certification of physical and mental competence to serve.

(F) The Council shall provide the information described in subparagraph (E) and § 20A-7-702 to the Office of Lieutenant Governor for publication in the voter information pamphlet.

(G) For each municipal justice court judge subject to reappointment, the Council shall provide the information described in subparagraph (E) to the appointing authority by August 1 of the year prior to the expiration of the judge's term of office.

(H) The Council shall notify each presiding judge of the certification decision on every commissioner by June 1 of

each even numbered year. Upon entry of a final decision not to certify a commissioner, the Council shall remove the commissioner from office. The surveyor shall provide to the presiding judge the report of the survey results for all commissioners of that court.

(5) Administration of the judicial performance evaluation program.

(A) The Standing Committee on Judicial Performance Evaluation shall:

(i) Provide to the Council a proposed schedule of activities and recommended procedures by which to administer the evaluation for certification by May 1 of each odd numbered year.

(ii) With the Council's approval, mail a schedule and list of procedures to all judges and commissioners subject to evaluation.

(iii) Include in its annual report to the Council recommendations for the improvement of the certification evaluation program.

(B) (i) Individual judges and commissioners shall be evaluated under this rule every 2 years. Newly appointed judges and commissioners shall be evaluated as soon as practicable after their first year in office and again prior to their initial retention election or reappointment.

(ii) If a judge between March 1 and July 1 of the year prior to the judge's retention election or a commissioner at any time states in writing to the Judicial Council his or her intent not to continue in office beyond the close of the calendar year in which the judge or commissioner is scheduled for retention election or reappointment, the Judicial Council shall not include the judge or commissioner within the list of judges and commissioners who are the subject of the next attorney survey. If the judge or commissioner remains in office contrary to his or her written commitment not to remain in office, the Council shall determine that the judge or commissioner is not entitled to certification for retention election or reappointment.

(C) Unless otherwise stated, evaluation and certification of judges and commissioners shall be based upon performance during the current term of office.

(D) Provisions for confidentiality shall be established such that performance data on individual judges or commissioners and the source of particular information cannot be identified except as required to comply with this rule.

(E) Data submitted to the Council for certification shall be tabulated by survey question or type of information by judge or commissioner, by court level and by geographical region.

(i) Data under this section shall be made available to the Council prior to its January meeting of each even numbered year.

(ii) Individual judges and commissioners shall receive their individual results a minimum of 20 days prior to submission to the Council. Judges and commissioners must provide comments on the results to the Council at least 5 working days prior to Council consideration.

(iii) Data collected by survey for certification purposes shall be reported only as satisfactory or unsatisfactory performance as defined in this rule.

(iv) The Council and individual judges or commissioners shall be provided with summary data and results without individual identification for each survey question or type of information for each court level and each geographical region.

1996

(v) The Council shall make information collected under this section on judges and court commissioners standing for retention election or reappointment available to the public prior to retention election or reappointment in the same form which was used by the Council to make its certification decision. Information on individual judges and commissioners not used for certification by the Council shall not be available to the public. Summary data compiled by court level or geographic region without identification of individual judges or commissioners may be made available to the public upon request.

(vi) Geographic regions are:

- (a) Region 1: Judicial Districts 1, 5, 6, 7, and 8;
- (b) Region 2: Judicial District 2;
- (c) Region 3: Judicial District 3; and
- (d) Region 4: Judicial District 4.

(Repealed and reenacted effective December 13, 1991; amended effective March 12, 1992; May 1, 1993; May 15, 1994; April 15, 1995; November 15, 1995.)

Rule 3-112. Justice Court Standards Committee. **Intent:**

To establish the responsibility for certifying new justice courts and recertifying existing justice courts.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) **Responsibilities of Justice Court Standards Committee.** The Committee shall be responsible for the following:

(A) To recommend to the Council:

- (i) minimum guidelines which demonstrate the need for a justice court, and which take into account the population, the number of case filings, the public convenience, the availability of law enforcement agencies and court support services, the proximity of other courts and other factors, and
- (ii) operational standards for statutorily required support services such as public facilities, clerical support, bailiff services, prosecution and indigent defense services.

(B) To recommend to the Council the creation and recertification of justice courts.

(C) To recommend to the Council procedures for reviewing requests for waivers or extensions of time to meet guidelines or standards.

(2) **Adoption and review of standards.**

(A) Proposed minimum guidelines for establishing the need for court and operational standards shall be distributed for comment to affected agencies and organizations before submission to the Council for approval.

(B) Operational standards shall be reviewed and updated every two years, beginning in 1992.

(3) **Publication.** Guidelines for establishing the need for a court, operational standards and the procedures for requesting waivers or extensions of time to meet the standards shall be published as an appendix to this Code.
(Added effective January 15, 1990; amended effective May 1, 1993.)

Rule 3-113. Senior Judges. **Intent:**

To provide for the certification of senior judges and active senior judges.

To establish the responsibility to provide for support services for active senior judges.

To provide for the compensation of active senior judges.

Applicability:

This rule shall apply to judicial employees and to senior judges and active senior judges of courts of record.

Statement of the Rule:

(1) **Certification.**

(A) Former justices and judges of courts of record who desire to be designated by the Council as senior justices, senior judges or active senior judges shall submit an application to the Council on a form provided by the state court administrator verifying compliance with the qualifications of office set forth in Supreme Court Rule 11-201.

(B) The Council shall consider all applications received, and may certify those who conform to the qualifications of office.

(2) **Support services.**

(A) The court executive of the court in which an active senior judge is serving shall make available clerical, stenographic, court reporter and bailiff services as needed in the performance of the judge's official duties.

(B) The court executive of the court in which an active senior judge is serving shall execute the necessary notice of appointment for the case or matters to which the judge has been assigned.

(C) The court executive of the district in which an active senior judge resides shall provide the following assistance as needed:

- (i) secretarial services;
- (ii) mail services;
- (iii) files and court documents;
- (iv) travel arrangements; and
- (v) preparation of reimbursement vouchers.

(D) Active senior judges shall be provided with a current set of the soft cover edition of the Utah Code and a subscription to Utah Advance Reports and Annotations, as provided by Rule 3-413.

(3) **Compensation.** Active senior judges shall be compensated at the rate and for the services and duties as set forth herein.

(A) Compensation for the performance of judicial duties related to the assignment of cases shall be at an hourly rate equal to the hourly rate of a district judge, and shall be paid in half-day increments.

(B) Compensation for all other duties, such as attendance at Board meetings, committee meetings, and educational functions required by this Code shall be paid at the rate of \$25.00 per half day (1-4 hours) and \$50.00 per full day (over 4 hours).

(C) For travel required in the performance of judicial duties related to the assignment of cases, senior judges shall be compensated for travel time in excess of one and one-half hours round trip at the hourly rate of a district judge, and for expenses, e.g., per diem, mileage, and lodging, at the rates allowed for state employees.

(D) For travel required in the performance of judicial duties not related to the assignment of cases, senior judges shall be compensated for round-trip travel time as follows:

0 — 1.5 hours	No payment
1.5 — 5.5 hours	\$25.00
More than 5.5 hours	\$50.00

and for expenses, e.g., per diem, mileage, and lodging, at the rates allowed for state employees.

(E) Compensation shall not include any form of benefits, i.e., state retirement contributions, medical or life insurance premiums, etc.

1996

retention election or reappointment.

(D) Information collected from individuals concerning the self-improvement evaluation shall be based on knowledge of the judge's performance during the current term of office or the commissioner's most recent 2 years of performance. Objective data collected shall be based on the judge's current term of office or the commissioner's most recent 2 years of performance.

(E) Provisions for confidentiality shall be established such that performance data on individual judges and commissioners and the source of information cannot be identified except as needed to comply with this rule.

(F) Dissemination and uses of self-improvement evaluation.

(i) Dissemination of results and data from the Program shall be consistent with and conform to the goal of self-improvement of the individual judge, commissioner and the judiciary as a whole.

(ii) Data collected for self-improvement and improvement of the judiciary shall be tabulated by question in the case of survey and by source and type where other methodologies are employed. The data shall be disseminated as follows:

(a) Individual data and results shall be provided only to the judge or commissioner evaluated, together with the averages for each judge's or commissioner's geographic region.

(b) Summary data and results, without individual identification, shall be provided to the Council and Boards of Judges by court level and within geographic region.

(c) Under no circumstances shall the data collected or the results of the evaluation be used to discipline a judge or commissioner or be disseminated to authorities charged with disciplinary responsibility or responsibility for determining certification for reelection, reappointment or continued service.

(iii) Geographic regions are:

(a) Region 1: Judicial Districts 1, 5, 6, 7, and 8;

(b) Region 2: Judicial District 2;

(c) Region 3: Judicial District 3; and

(d) Region 4: Judicial District 4.

Rule 3-111. Performance evaluation for certification of judges and commissioners.

Intent:

To establish a performance evaluation program to be used for the certification of judges and commissioners pursuant to Utah Code Ann. § 78-3-21(4).

To establish the guidelines which shall be used by the Council in certifying judges for retention election or reappointment.

To establish guidelines which shall be used by the Council and presiding judges in retaining a court commissioner for continued service.

To provide meaningful and relevant information to the public and applicable appointing authority to guide its decision on whether to retain or reappoint judges or commissioners without compromising the self-improvement goal of the Judicial Performance Evaluation Program or the independence of the judiciary.

Applicability:

This rule shall apply to all judges standing for retention election after November 1990, municipal justice court judges seeking reappointment and court commissioners, except that Paragraph (3)(A) shall apply only to the judges and commissioners of the courts of record and Paragraph (3)(B) shall apply only to the judges of the district court who conduct jury trials.

Paragraphs with more limited applicability shall apply as specified in the paragraph.

Statement of the Rule:

(1) Objective.

(A) Each judge standing for retention election, or other judge or commissioner standing for reappointment or continued service, shall be evaluated for compliance with the standards set forth in this rule for each criterion as defined in this rule.

(B) A judge or commissioner is entitled to certification upon compliance with the standards for each criterion set forth in this rule. Any judge or commissioner who fails to satisfy any of the standards for a criterion set forth in this rule is deemed not entitled to certification. Any judge or commissioner deemed not entitled to certification may request a hearing before the Council. The Council may, after hearing if requested, within its sole discretion, grant certification based on written findings that it is in the best interests of the administration of justice.

(C) No evaluation shall be based upon a criterion which has not been adopted and in effect for at least two years. However, the methodology for measurement may change from year to year.

(2) *Criteria of performance.* The following criteria shall be used to evaluate a judge or commissioner:

(A) *Integrity.* — Factors considered shall include but are not limited to:

(i) avoidance of impropriety and appearance of impropriety;

(ii) freedom from personal bias;

(iii) ability to decide issues based on the law and the facts without regard to the identity of the parties or counsel, the popularity of the decision, and without concern for or fear of criticism;

(iv) impartiality of actions; and

(v) compliance with the Code of Judicial Conduct.

(B) *Knowledge and understanding of the law and judicial branch rules.* — Factors considered shall include but are not limited to:

(i) the issuance of legally sound decisions;

(ii) understanding of the substantive, procedural, and evidentiary law of the state;

(iii) attentiveness to the factual and legal issues before the court; and

(iv) the proper application of judicial precedents and other appropriate sources of authority.

(C) *Ability to communicate.* — Factors considered shall include but are not limited to:

(i) clarity of bench rulings and other oral communications;

(ii) quality of written opinions with specific focus on clarity and logic, and the ability to explain clearly the facts of a case and the legal precedents at issue; and

(iii) sensitivity to impact of demeanor and other nonverbal communications.

(D) *Preparation, attentiveness, dignity and control over proceedings.* — Factors considered shall include but are not limited to:

(i) courtesy to all parties and participants; and

(ii) willingness to permit every person legally interested in a proceeding to be heard, unless precluded by law or rules of courts.

(E) *Skills as a manager.* — Factors considered shall include but are not limited to:

(i) devoting appropriate time to all pending matters;

(ii) discharging administrative responsibilities diligently; and

(iii) where responsibility exists for a calendar, knowledge of the number, age, and status of pending cases.

(F) *Punctuality.* — Factors considered shall include but are not limited to:

(i) the prompt disposition of pending matters; and

1998

(ii) meeting commitments on time and according to rules of the court.

(3) *Standards of performance.* The following standards of performance must be met to entitle a judge or commissioner to certification:

(A) *Survey of attorneys.* The Council shall measure satisfactory performance of each judge and commissioner of the courts of record by a sample survey of the attorneys appearing before the judge or commissioner during the preceding two years or such shorter period for which the judge or commissioner is being evaluated. The Standing Committee on Judicial Performance Evaluation shall submit a proposed survey and any proposed amendments to the Council for approval.

(i) *Survey subject matter.* Subjects inquired into by the survey shall be drawn from but need not include all of the criteria referenced in paragraph (2) of this rule.

(ii) *Survey questions.* The survey shall be divided into two parts: questions to be used in the certification of a judge or commissioner; and questions for the self improvement of the judge or commissioner. Only the questions approved by the Council for use in the certification section will be used for certification purposes. All questions will be used for self improvement purposes. The survey shall include a general retention question, which is part of the certification section, as follows: "Taking everything into account, would you recommend the Judicial Council certify this judge or commissioner for retention?"

(iii) *Survey scoring.* The survey shall be scored as follows:

(a) Each question, except the general retention question, of the attorney survey will have six possible responses: Excellent, More Than Adequate, Adequate, Less Than Adequate, Inadequate, or No Personal Knowledge. A favorable response is Excellent, More Than Adequate or Adequate.

(b) Each question shall be scored by dividing the total number of favorable responses by the total number of all responses, excluding the "No Personal Knowledge" responses.

(c) The general retention question shall not be used in the calculation of survey scoring. In the event that a judge or commissioner is not certified and requests a hearing, response to the general retention question may be utilized by the judge, commissioner, or Council as a mitigating or aggravating factor.

(d) A satisfactory score is achieved for each question when the favorable responses computed in (b) above is 70% or greater.

(e) A judge's or commissioner's performance is satisfactory if: (1) At least 75% of the questions on the certification portion of the survey, except the general retention question, have a satisfactory score as stated in (d) above; and (2) The favorable responses to the certification questions in the survey (except the general retention question) when divided by the total number of all responses to the certification questions (excluding "No Personal Knowledge" responses and general retention responses) is 70% or greater.

(iv) *Surveyor.* As used in this rule, the term "Surveyor" means the organization or individual awarded a contract through procedures established by the state procurement code to survey lawyers regarding the performance of judges.

(v) *Survey respondents.* The clerk for the judge or commissioner shall identify as potential respondents all lawyers who have appeared before the judge or commissioner at a hearing or trial during the preceding two year period or such shorter period for which the judge or commissioner is being evaluated. The judge or commissioner shall not review the list of potential respondents. A lawyer who has been appointed as a judge or commissioner shall not be a respondent in the survey.

(vi) *Exclusion from survey respondents.* By certifying that one or more of the following conditions applies, the judge or

commissioner may exclude an attorney from the list of respondents: The judge or commissioner

(a) has referred the lawyer to the Utah State Bar for discipline,

(b) has found the lawyer in contempt of court,

(c) has sanctioned the lawyer pursuant to rules of procedure,

(d) has presided in a civil or criminal proceeding to which the lawyer is a party,

(e) has been the subject of an affidavit of bias or prejudice under Utah Rule of Civil Procedure 63 or Utah Rule of Criminal Procedure 29 filed by the attorney, or

(f) has been the subject of a complaint by the attorney filed with the Judicial Conduct Commission or referred to the Commissioner Conduct Committee.

(vii) If a judge holds a law firm jointly responsible under Utah Rule of Civil Procedure 11(c)(1)(A), the judge may exclude all members of the law firm from the list of respondents.

(viii) *Number of survey respondents.* For each justice, judge, or commissioner who is the subject of a survey, the Surveyor shall identify 180 respondents or all attorneys appearing before the judge or commissioner whichever is less.

(ix) *Factors in selecting respondents; response rate.* In selecting respondents from potential respondents, the Surveyor should favor attorneys with a greater number of appearances and attorneys with more recent appearances, and the Surveyor should attempt to limit the number of survey questionnaires to which an attorney is asked to respond to 12. The Surveyor may balance these factors in assigning respondents to particular judges or commissioners. The Surveyor should pursue a response rate of 70% or more for each judge or commissioner. The goals of this subparagraph are advisory only and failure to meet the goals shall not invalidate the survey.

(B) *Survey of jurors.* The Council shall measure satisfactory performance of each judge by a survey of the jurors appearing before the judge during the preceding two years or such shorter period for which the judge is being evaluated. A survey of jurors for all district court judges who preside over jury trials shall be conducted during the four years prior to certification for retention election. However, a survey of jurors for district court judges serving prior to their initial retention election shall be conducted during the two years prior to certification for retention election. The results of surveys administered during the final two years prior to certification shall be used for certification. The results of surveys administered during the third and fourth years prior to certification shall be used for self improvement and not for certification. The results of the jury survey conducted between September 1996 and September 1997 shall be used for certification for judges standing for retention election in 1998.

(i) *Survey subject matter.* Subjects inquired into by the survey shall be drawn from but need not include all of the criteria in paragraph (2) of this rule. The Standing Committee on Judicial Performance Evaluation shall submit a proposed survey and any proposed amendments to the Council for approval. The survey shall include a general question as follows: "Would you be comfortable having your case tried before this judge?" Each question, except the general question, will have four possible responses: Yes, No, No Opinion, and No Opportunity to Observe. The general question shall have two responses: Yes and No. A note card on which the juror can provide anonymous comments to the judge shall be attached to the survey questionnaire.

(ii) *Survey scoring.* The survey shall be scored as follows:

(a) A favorable response is Yes.

(b) Each question shall be scored by dividing the total number of Yes responses by the total number of Yes plus No responses.

1998

(c) The general question shall not be used in the calculation of survey scoring. In the event a judge is not certified and requests a hearing, response to the general question may be used as a mitigating or aggravating factor.

(d) A satisfactory score is achieved for each question when the ratio of favorable responses computed in (b) above is 70% or greater.

(e) A judge's performance is satisfactory if: (1) At least 75% of the questions on the survey, except the general question, have a satisfactory score as stated in (d) above; and (2) The Yes responses to all questions except the general question, when divided by the total number of Yes plus No responses to all questions except the general question, is 70% or greater.

(iii) *Administration of the survey.* All jurors rendering a verdict in a case and all jurors, including alternate jurors, with at least three hours of trial time with the judge shall have the opportunity to be a respondent to the survey questionnaire.

(a) For jurors rendering a verdict. As soon as possible after the jury has been discharged, the bailiff or clerk in charge of the jury shall reassemble the jurors and provide them with the evaluation questionnaires and comment note cards and two envelopes. One envelope will be preprinted with the mailing address of the survey consultant; the other will be preprinted with the name of the judge. The forms will instruct the jurors to place the comment note cards in the envelope with the judge's name, to place the survey questionnaires, completed and uncompleted, in the envelope with the consultant's name, and to seal the envelopes. The bailiff or clerk shall deliver the sealed envelopes to the respective addressees.

(b) For jurors not rendering a verdict. If a juror or alternate juror is discharged prior to rendering a verdict but after at least three hours of trial time with the judge, the bailiff or clerk in charge of the jury shall administer the questionnaire to the discharged juror in the same manner as in paragraph (a) above.

(C) *Case under advisement standard.* A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge or commissioner for final determination. The Council shall measure satisfactory performance during the prior two years by the self declaration of the judge or commissioner or by review of the records of the court.

(i) A justice of the Supreme Court whose term of office expires in 1998 or thereafter demonstrates satisfactory performance by circulating not more than six principal opinions more than six months after submission.

(ii) A judge of the Court of Appeals whose term of office expires in 1998 or thereafter demonstrates satisfactory performance by:

(a) circulating not more than six principal opinions more than six months after submission; and

(b) achieving a final average time to circulation of a principal opinion of not more than 120 days after submission.

(iii) A trial court judge or commissioner demonstrates satisfactory performance by holding:

(a) 6 or fewer cases under advisement beyond 60 days after submission; and

(b) no case under advisement beyond 180 days after submission.

(D) *Compliance with education standards.* Satisfactory performance is established if the minimum education requirements established by this Code have been met subject to the availability of in-state education programs. The Council shall measure satisfactory performance during the prior two years by the self declaration of the judge or commissioner or by review of records of the state court administrator.

(E) *Substantial compliance with Code of Judicial Conduct and the Code of Judicial Administration.* Satisfactory perfor-

mance is established if the response of the judge or commissioner demonstrates substantial compliance with the Code of Judicial Conduct and the Code of Judicial Administration and if the Council finds the responsive information to be complete and correct.

(F) *Physical and mental competence.* Satisfactory performance is established if the response of the judge or commissioner demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.

(4) *Judicial council action.*

(A) The Council shall meet in a regularly scheduled meeting not later than February 15 of each even numbered year to determine if each judge or commissioner meets the standards of performance for each criterion as defined in this rule. The meeting shall be conducted in executive session called in compliance with the Utah Open and Public Meetings Act.

(B) The Council may determine that a judge subject to retention election after the abbreviated initial term of office is entitled to certification based upon the attorney survey conducted after the first 12 months in office and the other requirements of certification. The Council may determine that a judge subject to retention election after the abbreviated initial term of office is not entitled to certification based upon the second attorney survey conducted during the initial term of office.

(C) The Council shall certify each judge standing for retention election or reappointment and each commissioner who is entitled to certification under this rule. Written notice of the decision shall be provided to each judge or commissioner within 10 days after the Council's decision.

(D) Any judge or commissioner deemed not entitled to certification under this rule shall be notified of that decision within 10 days by the Council. Such judge or commissioner may request a hearing before the Council by filing a written request within 10 days after receiving notice of the Council's decision. The hearing shall be held within 20 days after receipt of the written request and such hearing shall be held in executive session.

(i) The judge or commissioner may provide explanation, information in mitigation or information to correct data previously provided to the Council. Information presented shall be directly responsive to the identified deficiency.

(ii) The Council may consider any other relevant information it deems appropriate in its sole discretion, including but not limited to factors in aggravation or mitigation, past performance evaluations, public and private sanctions entered by the Judicial Conduct Commission against the judge or by the Commissioner Conduct Committee against the court commissioner, and other testimony.

(iii) In evaluating failure to comply with a standard, the Council shall consider workload, absence from the bench, inadequacy of administrative support or other extenuating circumstances identified by the judge which may have prohibited compliance.

(iv) The Council shall notify the judge or commissioner of the Council's decision in writing within 10 days after the hearing.

(v) If a judge or commissioner not entitled to certification fails to request such a hearing within the time allowed, the Council shall memorialize at its next regularly scheduled meeting that such judge or commissioner is not certified.

(E) The Council shall provide the information in § 20A-7-702 to the Office of Lieutenant Governor for publication in the voter information pamphlet.

(F) For each municipal justice court judge subject to reappointment, the Council shall provide the information de-

1998

scribed in § 20A-7-702 to the appointing authority by August 1 of the year prior to the expiration of the judge's term of office.

(G) The Council shall notify each presiding judge of the certification decision on every commissioner by June 1 of each even numbered year. Upon entry of a final decision not to certify a commissioner, the Council shall remove the commissioner from office. The surveyor shall provide to the presiding judge the report of the survey results for all commissioners of that court.

(5) *Administration of the judicial performance evaluation program.*

(A) The Standing Committee on Judicial Performance Evaluation shall:

(i) Provide to the Council a proposed schedule of activities and recommended procedures by which to administer the evaluation for certification by May 1 of each odd numbered year.

(ii) With the Council's approval, mail a schedule and list of procedures to all judges and commissioners subject to evaluation.

(iii) Include in its annual report to the Council recommendations for the improvement of the certification evaluation program.

(B)(i) Individual judges and commissioners shall be evaluated under this rule every 2 years. Newly appointed judges and commissioners shall be evaluated as soon as practicable after their first year in office and again prior to their initial retention election or reappointment.

(ii) If a judge between March 1 and July 1 of the year prior to the judge's retention election or a commissioner at any time states in writing to the Judicial Council his or her intent not to continue in office beyond the close of the calendar year in which the judge or commissioner is scheduled for retention election or reappointment, the Judicial Council shall not include the judge or commissioner within the list of judges and commissioners who are the subject of the next attorney survey. If the judge or commissioner remains in office contrary to his or her written commitment not to remain in office, the Council shall determine that the judge or commissioner is not entitled to certification for retention election or reappointment.

(C) Unless otherwise stated, evaluation and certification of judges and commissioners shall be based upon performance during the current term of office.

(D) Provisions for confidentiality shall be established such that performance data on individual judges or commissioners and the source of particular information cannot be identified except as required to comply with this rule.

(E) Data submitted to the Council for certification shall be tabulated by survey question or type of information by judge or commissioner, by court level and by geographic region.

(i) Data under this section shall be made available to the Council prior to its January meeting of each even numbered year.

(ii) Individual judges and commissioners shall receive their individual results a minimum of 20 days prior to submission to the Council. Judges and commissioners must provide comments on the results to the Council at least 5 working days prior to Council consideration.

(iii) Data collected by survey for certification purposes shall be reported in 5% increments. However, if the sample size for the survey for a particular judge is too small to provide statistically reliable information in 5% increments, the survey results for that judge shall be reported as satisfactory or unsatisfactory performance as defined in this rule with a statement by the surveyor explaining why the survey is statistically unreliable.

(iv) The Council and individual judges or commissioners shall be provided with summary data and results without

individual identification for each survey question or type of information for each court level and each geographic region.

(v) The Council shall make information collected under this section on judges and court commissioners standing for retention election or reappointment available to the public prior to retention election or reappointment in the same form which was used by the Council to make its certification decision. Information on individual judges and commissioners not used for certification by the Council shall not be available to the public. Summary data compiled by court level or geographic region without identification of individual judges or commissioners may be made available to the public upon request.

(vi) Geographic regions are:

(a) Region 1: Judicial Districts 1, 5, 6, 7, and 8;

(b) Region 2: Judicial District 2;

(c) Region 3: Judicial District 3; and

(d) Region 4: Judicial District 4.

Rule 3-112. Justice Court Standards Committee.

Intent:

To establish the responsibility for certifying new justice courts and recertifying existing justice courts.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) *Responsibilities of justice court standards committee.* The Committee shall be responsible for the following:

(A) To recommend to the Council:

(i) minimum guidelines which demonstrate the need for a justice court, and which take into account the population, the number of case filings, the public convenience, the availability of law enforcement agencies and court support services, the proximity of other courts and other factors, and

(ii) operational standards for statutorily required support services such as public facilities, clerical support, bailiff services, prosecution and indigent defense services.

(B) To recommend to the Council the creation and recertification of justice courts.

(C) To recommend to the Council procedures for reviewing requests for waivers or extensions of time to meet guidelines or standards.

(2) *Adoption and review of standards.*

(A) Proposed minimum guidelines for establishing the need for court and operational standards shall be distributed for comment to affected agencies and organizations before submission to the Council for approval.

(B) Operational standards shall be reviewed and updated every two years, beginning in 1992.

(3) *Publication.* Guidelines for establishing the need for a court, operational standards and the procedures for requesting waivers or extensions of time to meet the standards shall be published as an appendix to this Code.

Rule 3-113. Senior judges.

Intent:

To provide for the certification of senior judges and active senior judges.

To establish the responsibility to provide for support services for active senior judges.

To provide for the compensation of active senior judges.

Applicability:

This rule shall apply to judicial employees and to senior judges and active senior judges of courts of record.

Statement of the Rule:

(1) *Certification.*

(A) Former justices and judges of courts of record who desire to be designated by the Council as senior justices,

1998

the judge's performance during the current term of office or the commissioner's most recent 2 years of performance. Objective data collected shall be based on the judge's current term of office or the commissioner's most recent 2 years of performance.

(E) Provisions for confidentiality shall be established such that performance data on individual judges and commissioners and the source of information cannot be identified except as needed to comply with this rule.

(F) Dissemination and uses of self-improvement evaluation.

(i) Dissemination of results and data from the Program shall be consistent with and conform to the goal of self-improvement of the individual judge, commissioner and the judiciary as a whole.

(ii) Data collected for self-improvement and improvement of the judiciary shall be tabulated by question in the case of survey and by source and type where other methodologies are employed. The data shall be disseminated as follows:

(a) Individual data and results shall be provided only to the judge or commissioner evaluated, together with the averages for each judge's or commissioner's geographic region.

(b) Summary data and results, without individual identification, shall be provided to the Council and Boards of Judges by court level and within geographic region.

(c) Under no circumstances shall the data collected or the results of the evaluation be used to discipline a judge or commissioner or be disseminated to authorities charged with disciplinary responsibility or responsibility for determining certification for reelection, reappointment or continued service.

(iii) Geographic regions are:

(a) Region 1: Judicial Districts 1, 5, 6, 7, and 8;

(b) Region 2: Judicial District 2;

(c) Region 3: Judicial District 3; and

(d) Region 4: Judicial District 4.

Rule 3-111. Performance evaluation for certification of judges and commissioners.

Intent:

To establish a performance evaluation program to be used for the certification of judges and commissioners pursuant to Utah Code Ann. § 78-3-21(4).

To establish the guidelines which shall be used by the Council in certifying judges for retention election or reappointment.

To establish guidelines which shall be used by the Council and presiding judges in retaining a court commissioner for continued service.

To provide meaningful and relevant information to the public and applicable appointing authority to guide its decision on whether to retain or reappoint judges or commissioners without compromising the self-improvement goal of the Judicial Performance Evaluation Program or the independence of the judiciary.

Applicability:

This rule shall apply to all judges standing for retention election after November 1990, municipal justice court judges seeking reappointment and court commissioners, except that Paragraph (3)(A) shall apply only to the judges and commissioners of the courts of record and Paragraph (3)(B) shall apply only to the judges of the district court who conduct jury trials.

Paragraphs with more limited applicability shall apply as specified in the paragraph.

Statement of the Rule:

(1) Objective.

(A) Each judge standing for retention election, or other judge or commissioner standing for reappointment or contin-

ued service, shall be evaluated for compliance with the standards set forth in this rule for each criterion as defined in this rule.

(B) A judge or commissioner is entitled to certification upon compliance with the standards for each criterion set forth in this rule. Any judge or commissioner who fails to satisfy any of the standards for a criterion set forth in this rule is deemed not entitled to certification. Any judge or commissioner deemed not entitled to certification may request a hearing before the Council. The Council may, after hearing if requested, within its sole discretion, grant certification based on written findings that it is in the best interests of the administration of justice.

(C) No evaluation shall be based upon a criterion which has not been adopted and in effect for at least two years. However, the methodology for measurement may change from year to year.

(2) *Criteria of performance.* The following criteria shall be used to evaluate a judge or commissioner:

(A) *Integrity.* Factors considered shall include but are not limited to:

(i) avoidance of impropriety and appearance of impropriety;

(ii) freedom from personal bias;

(iii) ability to decide issues based on the law and the facts without regard to the identity of the parties or counsel, the popularity of the decision, and without concern for or fear of criticism;

(iv) impartiality of actions; and

(v) compliance with the Code of Judicial Conduct.

(B) *Knowledge and understanding of the law and judicial branch rules.* Factors considered shall include but are not limited to:

(i) the issuance of legally sound decisions;

(ii) understanding of the substantive, procedural, and evidentiary law of the state;

(iii) attentiveness to the factual and legal issues before the court; and

(iv) the proper application of judicial precedents and other appropriate sources of authority.

(C) *Ability to communicate.* Factors considered shall include but are not limited to:

(i) clarity of bench rulings and other oral communications;

(ii) quality of written opinions with specific focus on clarity and logic, and the ability to explain clearly the facts of a case and the legal precedents at issue; and

(iii) sensitivity to impact of demeanor and other nonverbal communications.

(D) *Preparation, attentiveness, dignity and control over proceedings.* Factors considered shall include but are not limited to:

(i) courtesy to all parties and participants; and

(ii) willingness to permit every person legally interested in a proceeding to be heard, unless precluded by law or rules of courts.

(E) *Skills as a manager.* Factors considered shall include but are not limited to:

(i) devoting appropriate time to all pending matters;

(ii) discharging administrative responsibilities diligently; and

(iii) where responsibility exists for a calendar, knowledge of the number, age, and status of pending cases.

(F) *Punctuality.* Factors considered shall include but are not limited to:

(i) the prompt disposition of pending matters; and

(ii) meeting commitments on time and according to rules of the court.

(3) *Standards of performance.* The following standards of performance must be met to entitle a judge or commissioner to certification:

(A) *Survey of attorneys.* The Council shall measure satisfactory performance of each judge and commissioner of the

2000

courts of record by a sample survey of the attorneys appearing before the judge or commissioner during the preceding two years or such shorter period for which the judge or commissioner is being evaluated. The Standing Committee on Judicial Performance Evaluation shall submit a proposed survey and any proposed amendments to the Council for approval.

(i) *Survey subject matter.* Subjects inquired into by the survey shall be drawn from but need not include all of the criteria referenced in paragraph (2) of this rule.

(ii) *Survey questions.* All questions will be used for certification purposes and for certification purposes and for self improvement purposes. The survey shall include a general retention question, which is part of the certification section, as follows: "Taking everything into account, would you recommend the Judicial Council certify this judge or commissioner for retention?"

(iii) *Survey scoring.* The survey shall be scored as follows:

(a) Each question, except the general retention question, of the attorney survey will have six possible responses: Excellent, More Than Adequate, Adequate, Less Than Adequate, Inadequate, or No Personal Knowledge. A favorable response is Excellent, More Than Adequate or Adequate.

(b) Each question shall be scored by dividing the total number of favorable responses by the total number of all responses, excluding the "No Personal Knowledge" responses.

(c) The general retention question shall not be used in the calculation of survey scoring. In the event that a judge or commissioner is not certified and requests a hearing, response to the general retention question may be utilized by the judge, commissioner, or Council as a mitigating or aggravating factor.

(d) A satisfactory score is achieved for each question when the favorable responses computed in (b) above is 70% or greater.

(e) A judge's or commissioner's performance is satisfactory if:

(1) At least 75% of the questions, except the general retention question, have a satisfactory score as stated in (d) above; and

(2) The favorable responses (except the general retention question) when divided by the total number of all responses to the certification questions (excluding "No Personal Knowledge" responses and general retention responses) is 70% or greater.

(iv) *Surveyor.* As used in this rule, the term "Surveyor" means the organization or individual awarded a contract through procedures established by the state procurement code to survey lawyers regarding the performance of judges.

(v) *Survey respondents.* The clerk for the judge or commissioner shall identify as potential respondents all lawyers who have appeared before the judge or commissioner at a hearing or trial during the preceding two year period or such shorter period for which the judge or commissioner is being evaluated. The judge or commissioner shall not review the list of potential respondents. A lawyer who has been appointed as a judge or commissioner shall not be a respondent in the survey.

(vi) *Exclusion from survey respondents.* By certifying that one or more of the following conditions applies, the judge or commissioner may exclude an attorney from the list of respondents: The judge or commissioner

(a) has referred the lawyer to the Utah State Bar for discipline,

(b) has found the lawyer in contempt of court,

(c) has sanctioned the lawyer pursuant to rules of procedure,

(d) has presided in a civil or criminal proceeding to which the lawyer is a party, or

(e) has been the subject of an affidavit of bias or prejudice under Utah Rule of Civil Procedure 63 or Utah Rule of Criminal Procedure 29 filed by the attorney.

(vii) If a judge holds a law firm jointly responsible under Utah Rule of Civil Procedure 11(c)(1)(A), the judge may exclude all members of the law firm from the list of respondents.

(viii) *Number of survey respondents.* For each justice, judge, or commissioner who is the subject of a survey, the Surveyor shall identify 180 respondents or all attorneys appearing before the judge or commissioner whichever is less.

(ix) *Factors in selecting respondents; response rate.* In selecting respondents from potential respondents, the Surveyor should favor attorneys with a greater number of appearances and attorneys with more recent appearances, and the Surveyor should attempt to limit the number of survey questionnaires to which an attorney is asked to respond to 12. The Surveyor may balance these factors in assigning respondents to particular judges or commissioners. The Surveyor should pursue a response rate of 70% or more for each judge or commissioner. The goals of this subparagraph are advisory only and failure to meet the goals shall not invalidate the survey.

(x) *Administration of the survey.* Judges with a six year term of office shall be the subject of a survey in September of the third and fifth year of the term. Justices of the Supreme Court shall be the subject of a survey in September of the third, seventh and ninth years of the term. Newly appointed judges shall be the subject of a survey during their second year in office and, at their option, prior to their initial retention election. Court Commissioners shall be the subject of a survey approximately one year and three years prior to the expiration of their term of appointment.

(B) *Survey of jurors.* The Council shall measure satisfactory performance of each judge by a survey of the jurors appearing before the judge during the preceding two years or such shorter period for which the judge is being evaluated. A survey of jurors for all district court judges who preside over jury trials shall be conducted during the four years prior to certification for retention election. However, a survey of jurors for district court judges serving prior to their initial retention election shall be conducted during the two years prior to certification for retention election. The results of surveys administered during the final two years prior to certification shall be used for certification.

(i) *Survey subject matter.* Subjects inquired into by the survey shall be drawn from but need not include all of the criteria in paragraph (2) of this rule. The Standing Committee on Judicial Performance Evaluation shall submit a proposed survey and any proposed amendments to the Council for approval. The survey shall include a general question as follows: "Would you be comfortable having your case tried before this judge?" Each question, except the general question, will have four possible responses: Yes, No, No Opinion, and No Opportunity to Observe. The general question shall have two responses: Yes and No. A note card on which the juror can provide anonymous comments to the judge shall be attached to the survey questionnaire.

(ii) *Survey scoring.* The survey shall be scored as follows:

(a) A favorable response is Yes.

(b) Each question shall be scored by dividing the total number of Yes responses by the total number of Yes plus No responses.

(c) The general question shall not be used in the calculation of survey scoring. In the event a judge is not certified and requests a hearing, response to the general question may be used as a mitigating or aggravating factor.

(d) A satisfactory score is achieved for each question when the ratio of favorable responses computed in (b) above is 70% or greater.

(e) A judge's performance is satisfactory if:

(1) At least 75% of the questions on the survey, except the general question, have a satisfactory score as stated in (d) above; and

2000

(2) The Yes responses to all questions except the general question, when divided by the total number of Yes plus No responses to all questions except the general question, is 70% or greater.

(iii) *Administration of the survey.* All jurors rendering a verdict in a case and all jurors, including alternate jurors, with at least three hours of trial time with the judge shall have the opportunity to be a respondent to the survey questionnaire.

(a) For jurors rendering a verdict. As soon as possible after the jury has been discharged, the bailiff or clerk in charge of the jury shall reassemble the jurors and provide them with the evaluation questionnaires and comment note cards and two envelopes. One envelope will be preprinted with the mailing address of the survey consultant; the other will be preprinted with the name of the judge. The forms will instruct the jurors to place the comment note cards in the envelope with the judge's name, to place the survey questionnaires, completed and uncompleted, in the envelope with the consultant's name, and to seal the envelopes. The bailiff or clerk shall deliver the sealed envelopes to the respective addressees.

(b) For jurors not rendering a verdict. If a juror or alternate juror is discharged prior to rendering a verdict but after at least three hours of trial time with the judge, the bailiff or clerk in charge of the jury shall administer the questionnaire to the discharged juror in the same manner as in paragraph (a) above.

(C) *Case under advisement standard.* A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge or commissioner for final determination. The Council shall measure satisfactory performance during the prior two years by the self declaration of the judge or commissioner or by review of the records of the court.

(i) A justice of the Supreme Court whose term of office expires in 1998 or thereafter demonstrates satisfactory performance by circulating not more than six principal opinions more than six months after submission.

(ii) A judge of the Court of Appeals whose term of office expires in 1998 or thereafter demonstrates satisfactory performance by:

(a) circulating not more than six principal opinions more than six months after submission; and

(b) achieving a final average time to circulation of a principal opinion of not more than 120 days after submission.

(iii) A trial court judge or commissioner demonstrates satisfactory performance by holding:

(a) 6 or fewer cases under advisement beyond two months after submission; and

(b) no case under advisement beyond six months after submission.

(D) *Compliance with education standards.* Satisfactory performance is established if the minimum education requirements established by this Code have been met subject to the availability of in-state education programs. The Council shall measure satisfactory performance during the prior two years by the self declaration of the judge or commissioner or by review of records of the state court administrator.

(E) *Substantial compliance with Code of Judicial Conduct and the Code of Judicial Administration.* Satisfactory performance is established if the response of the judge or commissioner demonstrates substantial compliance with the Code of Judicial Conduct and the Code of Judicial Administration and if the Council finds the responsive information to be complete and correct.

(F) *Physical and mental competence.* Satisfactory performance is established if the response of the judge or commissioner demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to

be complete and correct. The Council may request a statement by an examining physician.

(4) *Judicial Council action.*

(A) The Council shall meet in a regularly scheduled meeting not later than February 15 of each even numbered year to determine if each judge or commissioner meets the standards of performance for each criterion as defined in this rule. The meeting shall be conducted in executive session called in compliance with the Utah Open and Public Meetings Act.

(B) The Council may determine that a judge subject to retention election after the abbreviated initial term of office is entitled to certification based upon the attorney survey conducted after the first 12 months in office and the other requirements of certification. The Council may determine that a judge subject to retention election after the abbreviated initial term of office is not entitled to certification based upon the second attorney survey conducted during the initial term of office.

(C) The Council shall certify each judge standing for retention election or reappointment and each commissioner who is entitled to certification under this rule. Written notice of the decision shall be provided to each judge or commissioner within 10 days after the Council's decision.

(D) Any judge or commissioner deemed not entitled to certification under this rule shall be notified of that decision within 10 days by the Council. Such judge or commissioner may request a hearing before the Council by filing a written request within 10 days after receiving notice of the Council's decision. The hearing shall be held within 20 days after receipt of the written request and such hearing shall be held in executive session.

(i) The judge or commissioner may provide explanation, information in mitigation or information to correct data previously provided to the Council. Information presented shall be directly responsive to the identified deficiency.

(ii) The Council may consider any other relevant information it deems appropriate in its sole discretion, including but not limited to factors in aggravation or mitigation, past performance evaluations, public and private sanctions entered by the Judicial Conduct Commission against the judge or by the Commissioner Conduct Committee against the court commissioner, and other testimony.

(iii) In evaluating failure to comply with a standard, the Council shall consider workload, absence from the bench, inadequacy of administrative support or other extenuating circumstances identified by the judge which may have prohibited compliance.

(iv) The Council shall notify the judge or commissioner of the Council's decision in writing within 10 days after the hearing.

(v) If a judge or commissioner not entitled to certification fails to request such a hearing within the time allowed, the Council shall memorialize at its next regularly scheduled meeting that such judge or commissioner is not certified.

(E) The Council shall provide the information in § 20A-7-702 to the Office of Lieutenant Governor for publication in the voter information pamphlet.

(F) For each municipal justice court judge subject to reappointment, the Council shall provide the information described in § 20A-7-702 to the appointing authority by August 1 of the year prior to the expiration of the judge's term of office.

(G) The Council shall notify each presiding judge of the certification decision on every commissioner by June 1 of each even numbered year. Upon entry of a final decision not to certify a commissioner, the Council shall remove the commissioner from office. The surveyor shall provide to the presiding judge the report of the survey results for all commissioners of that court.

(5) *Administration of the judicial performance evaluation program.*

(A) The Standing Committee on Judicial Performance Evaluation shall:

(i) Provide to the Council a proposed schedule of activities and recommended procedures by which to administer the evaluation for certification by May 1 of each odd numbered year.

(ii) With the Council's approval, mail a schedule and list of procedures to all judges and commissioners subject to evaluation.

(iii) Include in its annual report to the Council recommendations for the improvement of the certification evaluation program.

(B) If a judge between March 1 and July 1 of the year prior to the judge's retention election or a commissioner at any time states in writing to the Judicial Council his or her intent not to continue in office beyond the close of the calendar year in which the judge or commissioner is scheduled for retention election or reappointment, the Judicial Council shall not include the judge or commissioner within the list of judges and commissioners who are the subject of the next attorney survey. If the judge or commissioner remains in office contrary to his or her written commitment not to remain in office, the Council shall determine that the judge or commissioner is not entitled to certification for retention election or reappointment.

(C) Unless otherwise stated, evaluation and certification of judges and commissioners shall be based upon performance during the current term of office.

(D) Provisions for confidentiality shall be established such that performance data on individual judges or commissioners and the source of particular information cannot be identified except as required to comply with this rule.

(E) Data submitted to the Council for certification shall be tabulated by survey question or type of information by judge or commissioner, by court level and by geographic region.

(i) Data under this section shall be made available to the Council prior to its January meeting of each even numbered year.

(ii) Individual judges and commissioners shall receive their individual results a minimum of 20 days prior to submission to the Council. Judges and commissioners must provide comments on the results to the Council at least 5 working days prior to Council consideration.

(iii) Data collected by survey for certification purposes shall be reported in 1% increments. However, if the sample size for the survey for a particular judge is too small to provide statistically reliable information in 1% increments, the survey results for that judge shall be reported as satisfactory or unsatisfactory performance as defined in this rule with a statement by the surveyor explaining why the survey is statistically unreliable.

(iv) The Council and individual judges or commissioners shall be provided with summary data and results without individual identification for each survey question or type of information for each court level and each geographic region.

(v) The Council shall make information collected under this section on judges and court commissioners standing for retention election or reappointment available to the public prior to retention election or reappointment in the same form which was used by the Council to make its certification decision. Information on individual judges and commissioners not used for certification by the Council shall not be available to the public. Summary data compiled by court level or geographic region without identification of individual judges or commissioners may be made available to the public upon request.

(vi) Geographic regions are:

(a) Region 1: Judicial Districts 1, 5, 6, 7, and 8;

(b) Region 2: Judicial District 2;

(c) Region 3: Judicial District 3; and

(d) Region 4: Judicial District 4.

Rule 3-112. Justice Court Standards Committee.

Intent:

To establish the responsibility for certifying new justice courts and recertifying existing justice courts.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) *Responsibilities of Justice Court Standards Committee.* The Committee shall be responsible for the following:

(A) To recommend to the Council:

(i) minimum guidelines which demonstrate the need for a justice court, and which take into account the population, the number of case filings, the public convenience, the availability of law enforcement agencies and court support services, the proximity of other courts and other factors, and

(ii) operational standards for statutorily required support services such as public facilities, clerical support, bailiff services, prosecution and indigent defense services.

(B) To recommend to the Council the creation and recertification of justice courts.

(C) To recommend to the Council procedures for reviewing requests for waivers or extensions of time to meet guidelines or standards.

(2) *Adoption and review of standards.*

(A) Proposed minimum guidelines for establishing the need for court and operational standards shall be distributed for comment to affected agencies and organizations before submission to the Council for approval.

(B) Operational standards shall be reviewed and updated every two years, beginning in 1992.

(3) *Publication.* Guidelines for establishing the need for a court, operational standards and the procedures for requesting waivers or extensions of time to meet the standards shall be made available upon request.

Rule 3-113. Senior judges.

Intent:

To provide for the certification of senior judges and active senior judges.

To establish the responsibility to provide for support services for active senior judges.

To provide for the compensation of active senior judges.

Applicability:

This rule shall apply to judicial employees and to senior judges and active senior judges of courts of record.

Statement of the Rule:

(1) *Certification.*

(A) Former justices and judges of courts of record who desire to be designated by the Council as senior justices, senior judges or active senior judges shall submit an application to the Council on a form provided by the state court administrator verifying compliance with the qualifications of office set forth in Supreme Court Rule 11-201.

(B) The Council shall consider all applications received, and may certify those who conform to the qualifications of office.

(2) *Support services.*

(A) The court executive of the court in which an active senior judge is serving shall make available clerical and bailiff services as needed in the performance of the judge's official duties. The court executive of the court in which an active senior judge is serving shall make available court reporting equipment and personnel in accordance with Rule 3-305 and Rule 4-201.

2000

(8) *Recusal.* Circumstances which require recusal of a judge shall require recusal of a Committee member from participation in Committee action. If the chair is recused, a majority of the remaining members shall select a chair pro tempore. If a member is recused, the chair may appoint a judge of the same court and if applicable the same geographic division or a lawyer to assist the Committee with its deliberations. Preference should be given to former members of the Committee.

(9) *Publication.* All opinions of the Committee and the Judicial Council shall be numbered upon issuance, compiled annually and published periodically in a publication approved by the Judicial Council. No published opinion rendered by the Committee or the Council shall identify the requesting party whose conduct is the subject of the opinion unless confidentiality of the requesting party is waived in writing.

(10) *Legal effect.* Compliance with an informal opinion shall be considered evidence of good faith compliance with the Code of Judicial Conduct. Formal opinions shall constitute a binding interpretation of the Code of Judicial Conduct.

Rules 3-110, 3-111. Repealed.

Rule 3-111.01. Goals of performance evaluation for certification for retention election.

Intent:

To specify the goals of evaluating judges for certification for retention election.

Applicability:

This rule shall apply to the Judicial Council and to the judges and commissioners of the courts of record and courts not of record.

Statement of the Rule:

The goals of the judicial performance evaluation program are to:

- (1) establish the criteria upon which judges will be evaluated, the standards against which judicial performance will be measured and the methods for fairly, accurately and reliably measuring judicial performance;
- (2) generate and to provide to judges and commissioners information about their performance;
- (3) establish the procedures by which the Council will evaluate and certify judges for retention election or reappointment;
- (4) establish the procedures by which the Council will evaluate and certify commissioners for reappointment;
- (5) provide meaningful and relevant information to the public or applicable appointing authority to assist in the decision to retain or reappoint judges and commissioners; and
- (6) protect the independence of judges and commissioners in their obligations under federal and state constitutions, federal and state statutes and court rules.

Rule 3-111.02. Judicial performance evaluation criteria.

Intent:

To specify the criteria upon which judges will be evaluated and certified.

Applicability:

This rule shall apply to the Judicial Council and to the judges and commissioners of the courts of record and courts not of record.

Statement of the Rule:

Judges and commissioners shall be evaluated and certified upon the following criteria.

- (1) *Integrity.* Factors considered may include but are not limited to:

(A) avoidance of impropriety and appearance of impropriety;

(B) freedom from personal bias;

(C) ability to decide issues based on the law and the facts without regard to the identity of the parties or counsel, the popularity of the decision or concern for criticism;

(D) impartiality of actions; and

(E) compliance with the Code of Judicial Conduct.

(2) *Knowledge and understanding of the law and procedures.* Factors considered may include but are not limited to:

(A) the issuance of legally sound decisions;

(B) understanding of the substantive, procedural, and evidentiary law of the state;

(C) attentiveness to the factual and legal issues before the court; and

(D) the proper application of judicial precedents and other appropriate sources of authority.

(3) *Ability to communicate.* Factors considered may include but are not limited to:

(A) clarity of bench rulings and other oral communications;

(B) quality of written opinions with specific focus on clarity and logic, and the ability to explain clearly the facts of a case and the legal precedents at issue; and

(C) sensitivity to impact of demeanor and other nonverbal communications.

(4) *Preparation, attentiveness, dignity and control over proceedings.* Factors considered may include but are not limited to:

(A) courtesy to all parties and participants; and

(B) willingness to permit every person legally interested in a proceeding to be heard, unless precluded by law.

(5) *Skills as a manager.* Factors considered may include but are not limited to:

(A) devoting appropriate time to all pending matters;

(B) discharging administrative responsibilities diligently; and

(C) where responsibility exists for a calendar, knowledge of the number, age, and status of pending cases.

(6) *Punctuality.* Factors considered may include but are not limited to:

(A) the prompt disposition of pending matters;

(B) meeting commitments on time and according to rules of the court; and

(C) compliance with the case processing time standard established by the Council.

(7) *Service to the profession and the public.* Factors considered may include but are not limited to:

(A) attendance at and participation in judicial and continuing legal education programs;

(B) consistent with the Code of Judicial Conduct, participation in organizations devoted to improving the justice system;

(C) consistent with the highest principles of the law, ensuring that the court is serving the public and the justice system to the best of its ability and in such a manner as to instill confidence in the court system; and

(D) service within the organizations of the judicial branch of government and in leadership positions within the judicial branch of government, such as presiding judge, Judicial Council, Boards of Judges, and standing and ad hoc committees.

(8) *Effectiveness in working with other judges, commissioners and court personnel.* Factors considered may include but are not limited to:

(A) when part of a multi-judge panel, exchanging ideas and opinions with other judges during the decision-making process;

(B) critiquing the work of colleagues;

(C) facilitating the administrative responsibilities of other judges and commissioners; and

(D) effectively working with court staff.

2002

Rule 3-111.03. Standards of judicial performance.**Intent:**

To specify the standards against which judicial performance will be measured and the methods for fairly, accurately and reliably measuring judicial performance.

Applicability:

This rule shall apply to the Judicial Council and, except as otherwise provided, to the judges and commissioners of the courts of record and not of record.

Subsection (2)(A) shall apply to the judges and commissioners of the courts of record.

Subsection (2)(B) shall apply to the judges of the district court who conduct jury trials.

For judges standing for retention election in 2004 and beyond and for commissioners subject to reappointment in 2003 and beyond, Subsection (2)(C) shall apply from the effective date of the rule until the evaluation by the Council or for the judge's or commissioner's term of office, whichever is shorter. Judges standing for retention election in 2002 and commissioners subject to reappointment in 2002 shall meet the case under advisement standard as it existed prior to the effective date of this rule. (Former Rule 3-111(3)(C).)

Statement of the Rule:

(1)(A) A judge standing for retention election or reappointment, or commissioner standing for reappointment, shall be evaluated for compliance with the standards set forth in this rule.

(B) No evaluation shall be based upon a criterion or standard in effect for less than two years. However, the methodology for measurement may change periodically. Evaluation shall be based upon performance during the current term of office.

(2) Standards of performance.**(A) Survey of attorneys.**

(i) The Council shall measure satisfactory performance by a sample survey of the attorneys appearing before the judge or commissioner during the preceding two years or such shorter period for which the judge or commissioner is being evaluated. The Council shall measure satisfactory performance based on the results of the final survey conducted during a judge's or commissioner's term of office, subject to the discretion of a judge serving an abbreviated initial term not to participate in a second survey under Section (2)(A)(viii) of this rule.

(ii) *Survey scoring.* The survey shall be scored as follows.

(a) Each question of the attorney survey will have six possible responses: Excellent, More Than Adequate, Adequate, Less Than Adequate, Inadequate, or No Personal Knowledge. A favorable response is Excellent, More Than Adequate or Adequate.

(b) Each question shall be scored by dividing the total number of favorable responses by the total number of all responses, excluding the "No Personal Knowledge" responses. A satisfactory score for a question is achieved when the ratio of favorable responses is 70% or greater.

(c) A judge's or commissioner's performance is satisfactory if:

(1) at least 75% of the questions have a satisfactory score; and

(2) the favorable responses when divided by the total number of all responses, excluding "No Personal Knowledge" responses, is 70% or greater.

(iii) *Surveyor:* As used in this Code, the term "Surveyor" means the organization or individual awarded a contract through procedures established by the state procurement code to survey respondents regarding the performance of judges.

(iv) *Survey respondents.* The clerk for the judge or commissioner or the Administrative Office of the Courts shall identify as potential respondents all lawyers who have appeared before the judge or commissioner at a hearing or trial during

the preceding two year period or such shorter period for which the judge or commissioner is being evaluated. The judge or commissioner shall not review the list of potential respondents.

(v) Exclusion from survey respondents.

(a) A lawyer who has been appointed as a judge or commissioner shall not be a respondent in the survey.

(b) By certifying that one or more of the following conditions applies, the judge or commissioner may exclude an attorney from the list of respondents: The judge or commissioner

(1) has referred the lawyer to the Utah State Bar for discipline,

(2) has found the lawyer in contempt of court,

(3) has sanctioned the lawyer pursuant to rules of procedure,

(4) has held the lawyer's law firm jointly responsible under Utah Rule of Civil Procedure 11(c)(1)(A),

(5) has presided in a civil or criminal proceeding to which the lawyer is a party, or

(6) has been the subject of an affidavit of bias or prejudice under Utah Rule of Civil Procedure 63 or Utah Rule of Criminal Procedure 29 filed by the attorney in which the attorney alleges animus of the judge or commissioner toward the attorney.

(c) Other exclusions.

(1) A judge may request that the Judicial Council exclude from the survey an attorney who does not qualify for exclusion under (b) if the judge believes the attorney will not respond objectively to the survey. The request must be submitted within 14 days after receiving the form for excluding lawyers under (b).

(2) In the request, the judge shall explain why the attorney will not respond objectively to the survey. The judge shall explain why the attorney's behavior has not subjected the attorney to sanction under the rules of procedure, contempt or referral to the Bar.

(3) If the Management Committee determines that the attorney will not respond objectively to the survey, the Management Committee shall inform the Judicial Council for ratification. If the Judicial Council ratifies the determination, the Administrative Office of the Courts shall notify the Surveyor and the Surveyor shall exclude the attorney from the judge's respondent pool. The determination applies only to the pending attorney survey.

(vi) *Number of survey respondents.* For each judge or commissioner who is the subject of a survey, the Surveyor shall identify 180 respondents or all attorneys appearing before the judge or commissioner whichever is less.

(vii) *Factors in selecting respondents; response rate.* In selecting respondents from potential respondents, the Surveyor should favor attorneys with a greater number of appearances and attorneys with more recent appearances, and the Surveyor should limit to 12 the number of survey questionnaires to which an attorney is asked to respond. The Surveyor may balance these factors in assigning respondents to particular judges or commissioners. The Surveyor should pursue a response rate of 70% or more for each judge or commissioner. The goals of this paragraph are advisory and failure to meet the goals shall not invalidate the survey.

(viii) *Administration of the survey.* Judges with a six-year term of office shall be the subject of a survey in the fifth year of the term. Justices of the Supreme Court shall be the subject of a survey in the ninth year of the term. Newly appointed judges shall be the subject of a survey during their second year in office and, at their option, prior to their initial retention election. Court Commissioners shall be the subject of a survey approximately one year prior to the expiration of their term of appointment.

(B) *Survey of jurors.* The Council shall measure satisfactory performance by a survey of the jurors appearing before the judge during the preceding two years or such shorter period for which the judge is being evaluated.

(i) *Survey responses.* Each question will have four possible responses: Yes, No, No Opinion, and No Opportunity to Observe. A note card on which the juror can provide anonymous comments to the judge shall be attached to the survey questionnaire.

(ii) *Survey scoring.* The survey shall be scored as follows:

(a) A favorable response is Yes.

(b) Each question shall be scored by dividing the total number of Yes responses by the total number of Yes plus No responses.

(c) A satisfactory score for a question is achieved when the ratio of favorable responses is 70% or greater.

(d) A judge's performance is satisfactory if:

(1) At least 75% of the questions on the survey have a satisfactory score; and

(2) The Yes responses to all questions when divided by the total number of Yes plus No responses to all questions is 70% or greater.

(iii) *Administration of the survey.* All jurors rendering a verdict in a case and all jurors, including alternate jurors, with at least three hours of trial time with the judge shall have the opportunity to respond to the survey questionnaire.

(a) For jurors rendering a verdict. While the jurors are waiting for court to convene after declaring that they have reached a verdict, or as soon as possible after the jury has been discharged, the bailiff or clerk in charge of the jury shall provide the jurors with the evaluation questionnaires and comment note cards and two envelopes. One envelope will be preprinted with the mailing address of the Surveyor; the other will be preprinted with the name of the judge. The forms will instruct the jurors to place the comment note cards in the envelope with the judge's name, to place the survey questionnaires, completed and uncompleted, in the envelope with the Surveyor's name, and to seal the envelopes. The bailiff or clerk shall deliver the sealed envelopes to the respective addressees.

(b) For jurors not rendering a verdict. If a juror or alternate juror is discharged prior to rendering a verdict but after at least three hours of trial time with the judge, the bailiff or clerk in charge of the jury shall administer the questionnaire to the discharged juror in the same manner as in paragraph (a) above.

(C) *Case under advisement standard.* A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge or commissioner for final determination. The Council shall measure satisfactory performance by the self declaration of the judge or commissioner or by reviewing the records of the court.

(i) A justice of the Supreme Court demonstrates satisfactory performance by circulating not more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year.

(ii) A judge of the Court of Appeals demonstrates satisfactory performance by:

(a) circulating not more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

(b) achieving a final average time to circulation of a principal opinion of not more than 120 days after submission.

(iii) A trial court judge or commissioner demonstrates satisfactory performance by holding:

(a) not more than an average of three cases per calendar year under advisement more than two months after submission

with no more than half of the maximum exceptional cases in any one calendar year; and

(b) no case under advisement more than six months after submission.

(D) *Compliance with education standards.* Satisfactory performance is established if the judge meets the minimum education requirements established by this Code subject to the availability of in-state education programs. The Council shall measure satisfactory performance by the self declaration of the judge or commissioner or by reviewing the records of the state court administrator.

(E) *Substantial compliance with Code of Judicial Conduct.* Satisfactory performance is established if the response of the judge or commissioner demonstrates substantial compliance with the Code of Judicial Conduct, if the Council finds the responsive information to be complete and correct and if the Council's review of formal and informal sanctions lead the Council to conclude the judge is in substantial compliance with the Code of Judicial Conduct.

(F) *Physical and mental competence.* Satisfactory performance is established if the response of the judge or commissioner demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.

Rule 3-111.04. Evaluation and certification of judges and commissioners.

Intent:

To establish the procedures by which the Council will evaluate and certify judges for retention election or reappointment.

To establish the procedures by which the Council will evaluate and certify commissioners for reappointment.

Applicability:

This rule shall apply to the Judicial Council and to the judges and commissioners of the courts of record and courts not of record.

Statement of the Rule:

(A) At its meeting in December of odd-numbered years, the Council shall begin the process of determining whether the judges subject to election at the next general election meet the standards of performance provided for in this rule. The Administrative Office of the Courts shall assemble all evaluation information, including:

(i) attorney and juror survey scores;

(ii) judicial education records;

(iii) self declaration forms;

(iv) records of formal and informal sanctions by the Supreme Court; and

(v) any information requested by the Council.

(B)(i) Prior to the meeting the Administrative Office of the Courts shall deliver the records to the Council and to the judges being evaluated.

(ii) In a session closed in compliance with Rule 2-103, the Council shall consider the evaluation information and make a preliminary finding of whether a judge met the performance standards established by Rule 3-111.03.

(iii) If the Council finds the judge met the performance standards, it is presumed the Council will certify the judge be retained in the general election. If the Council finds the judge did not meet the performance standards, it is presumed the Council will not certify the judge be retained in the general election. The Council may certify the judge for retention election or withhold decision until after meeting with the judge.

(iv) A presumption against certification may be overcome by a showing of good cause to the contrary. A presumption in favor of certification may be overcome by:

2002

(a) reliable information showing non-compliance with a performance standard; or

(b) formal or informal sanctions by the Supreme Court of sufficient gravity or number or both to demonstrate lack of substantial compliance with the Code of Judicial Conduct.

(C) At the request of the Council the judge shall meet with the Council in January. At the request of the Council the presiding judge and other reviewing judge shall report to the Council any meetings held with the subject judge, the steps toward self-improvement identified as a result of those meetings, and the efforts to complete those steps. Not later than 5 days after the December meeting, the Administrative Office of the Courts shall deliver to the judges being evaluated notice of the Council's action and any records not already delivered to the judge. If the judge is to meet with the Council, the notice shall contain an adequate description of the reasons the Council has withheld its decision and the date by which the judge is to deliver written materials. The Administrative Office of the Courts shall deliver copies of all materials to the Council and to the judge prior to the January meeting.

(D)(i) At its January meeting in a session closed in accordance with Rule 2-103, the Council shall provide to the judge adequate time to present evidence and arguments in favor of certification. Any member of the Council may present evidence and arguments of which the judge has had notice opposed to certification. The burden is on the person arguing against the presumed certification. The Council may determine the order of presentation. The Council may continue the closed meeting with the judge to the February Council meeting.

(ii) At its January or February meeting in open session, the Council shall approve its final findings and certification regarding all judges standing for retention election at the next general election.

(E) The Council shall approve the statements and descriptions required by § 20A-7-702 for the voter information pamphlet. The judge may review and edit the biographical summary. The Administrative Office of the Courts shall promptly deliver the approved statement regarding a judge to the judge and shall deliver the approved statement regarding all judges to the Lt. Governor no later than August 1. Upon delivery to the Lt. Governor, the Administrative Office of the Courts shall publish the statement regarding all judges on the Internet.

(F) For municipal justice court judges, the Council shall use the same evaluation process as for judges of the courts of record, but the process shall begin in December of even numbered years, approximately 14 months prior to the expiration of the municipal judges' terms of office. The Administrative Office of the Courts shall deliver a statement similar in content and purpose to the one described in § 20A-7-702 to the respective judges and to the Mayor of the judges' jurisdictions no later than August 1 prior to the expiration of the municipal judges' terms of office. The Administrative Office of the Courts shall publish the statements on the Internet.

(G) For commissioners, the Council shall use the same evaluation process as for judges, but the Council may remove the commissioner upon the same grounds and statement of reasons for which it could certify a judge not be retained. The timing of meetings shall be such as to conclude all steps at least 60 days prior to expiration of the commissioner's term of office. The Administrative Office of the Courts shall notify the commissioner of the dates of all events and meetings. The Administrative Office of the Courts shall promptly notify the presiding judge of the Council's finding, certification and statement of reasons.

Rule 3-111.05. Evaluation and certification of senior judges.

Intent:

To establish a performance evaluation program for active senior judges.

Applicability:

This rule shall apply to the Judicial Council and to active senior judges of courts of record.

Statement of the Rule:

(1) *Criteria of performance.* Active senior judges shall be evaluated and certified using the performance criteria in Rule 3-111.02.

(2) *Evaluation information.* The evaluation and certification shall be based upon performance during the senior judge's current term of office. The following information shall be used:

(A) Survey of attorneys.

(i) The Council shall measure performance by a survey of the attorneys appearing before the senior judge. The survey shall provide the opportunity for the respondent to comment to the Council as well as to the senior judge.

(ii) The survey shall be administered by the Surveyor.

(iii) The Administrative Office of the Courts shall identify as potential respondents all lawyers who have appeared before the senior judge at a hearing or trial during the senior judge's current term. The senior judge shall not review the list of potential respondents. The Surveyor shall identify 180 respondents or all the attorneys appearing before the senior judge whichever is less.

(iv) The Surveyor shall report to the Council the number and percentage of respondents for each of the possible responses on each question.

(B) *Survey of presiding judges and court staff.* The Council shall measure performance by a survey of all presiding judges and trial court executives of districts in which the judge has been assigned. The Administrative Office of the Courts shall distribute survey forms with instructions to return completed surveys to the Surveyor.

(C) The Surveyor shall provide the Council with a report of all survey responses for the senior judge's current term.

(3) Standards of performance.

(A) *Surveys.* The Judicial Council shall determine whether the senior judge's scores reported on the surveys are satisfactory.

(B) *Cases under advisement.* The Council shall measure satisfactory performance by the self-declaration of the senior judge or by review of the records of the court. The senior judge shall demonstrate satisfactory performance by complying with the cases under advisement standard in Rule 3-111.03 for the court in which the judge has been assigned.

(C) *Compliance with education standards.* Satisfactory performance is established if the senior judge meets the minimum education requirements established by this Code subject to the availability of in-state education programs. The Council shall measure satisfactory performance during the current term by the self declaration of the senior judge or by review of records of the state court administrator.

(D) *Substantial compliance with Code of Judicial Conduct.* Satisfactory performance is established if the response of the senior judge demonstrates substantial compliance with the Code of Judicial Conduct and if the Council finds the responsive information to be complete and correct.

(E) *Physical and mental competence.* Satisfactory performance is established if the response of the senior judge demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.

(4) *Judicial Council action.* Upon application for appointment under Rule 11-201, the Administrative Office of the Courts shall provide to the Judicial Council the information submitted by the senior judge as well as survey scores and any other relevant information to the Council. The information provided to the Council shall be provided to the senior judge

prior to
informe
that the
senior j

Rule 3 man

Intent:

To pr
ation pr

Applic

This

Standin

System

(1) T

sionally

include

persona

multiple so

from inc

judge's c

(2) Th

Evaluat

(A) pr

activities

tion and

(B) wi

activities

(C) re

the eval

(D) pr

Subjects

need no

3-111.02.

(3) Fo

election

Council t

the poss

identifyi

shall pro

court lev

(4)(A)

mance r

findings

approval

Council's

sults shal

from the

Upon bei

identify t

(B) Th

region, w

ers, are c

(C) Res

(5) Geo

(a) Reg

(b) Reg

(c) Reg

(d) Reg

(e) Reg

Rule 3-11

Intent:

To estab

courts and

Applicab

This rul

prior to consideration by the Council. After considering all information, the Council may certify to the Supreme Court that the applicant meets the qualifications for being an active senior judge.

Rule 3-111.06. Administration of the judicial performance evaluation and certification program.

Intent:

To provide for the administration of the performance evaluation program for evaluation and certification.

Applicability:

This rule shall apply to the Judicial Council and to the Standing Committee on Judicial Performance Evaluation.

Statement of the Rule:

(1) The performance evaluation program shall use professionally recognized methods of data collection which may include surveys, onsite visits, caseload management data and personal interviews. Information shall be obtained from multiple sources to provide balanced information. Information from individuals shall be based on personal knowledge of the judge's or commissioner's performance.

(2) The Standing Committee on Judicial Performance Evaluation shall:

(A) propose to the Council a schedule of recommended activities and procedures by which to administer the evaluation and certification program;

(B) with the Council's approval, provide a schedule of activities and procedures to all judges and commissioners;

(C) report to the Council recommendations for improving the evaluation and certification program; and

(D) propose to the Council any surveys and amendments. Subjects inquired into by a survey shall be drawn from but need not include all of the criteria established by Rule 3-111.02.

(3) For each judge and commissioner standing for retention election or reappointment, the Surveyor shall provide to the Council the number and percentage of respondents for each of the possible responses on each survey question. Without identifying individual judges or commissioners, the Surveyor shall provide the Council with the survey results for each court level and geographic region.

(4)(A) Except as provided in this Code, judicial performance records relied upon by the Council in making its findings and certifications are classified as public records upon approval of the final findings and certifications. Prior to the Council's preliminary findings and certifications, survey results shall be marked with a code number in order to withhold from the Council the identity of the judge or commissioner. Upon being classified as a public record, the records shall identify the judge to whom they pertain.

(B) The survey results for each court level and geographic region, without identifying individual judges or commissioners, are classified as public records.

(C) Respondents to surveys shall be anonymous.

(5) Geographic regions are:

(a) Region 1: Judicial Districts 5, 6, 7, and 8;

(b) Region 2: Judicial Districts 1 and 2;

(c) Region 3: Judicial District 3;

(d) Region 4: Judicial District 4; and

(e) Region 5: The Supreme Court and the Court of Appeals.

Rule 3-112. Justice Court Standards Committee.

Intent:

To establish the responsibility for certifying new justice courts and recertifying existing justice courts.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) *Responsibilities of Justice Court Standards Committee.* The Committee shall be responsible for the following:

(A) To recommend to the Council:

(i) minimum guidelines which demonstrate the need for a justice court, and which take into account the population, the number of case filings, the public convenience, the availability of law enforcement agencies and court support services, the proximity of other courts and other factors, and

(ii) operational standards for statutorily required support services such as public facilities, clerical support, bailiff services, prosecution and indigent defense services.

(B) To recommend to the Council the creation and recertification of justice courts.

(C) To recommend to the Council procedures for reviewing requests for waivers or extensions of time to meet guidelines or standards.

(2) *Adoption and review of standards.*

(A) Proposed minimum guidelines for establishing the need for court and operational standards shall be distributed for comment to affected agencies and organizations before submission to the Council for approval.

(B) Operational standards shall be reviewed and updated every two years, beginning in 1992.

(3) *Publication.* Guidelines for establishing the need for a court, operational standards and the procedures for requesting waivers or extensions of time to meet the standards shall be made available upon request.

Rule 3-113. Senior judges.

Intent:

To establish the responsibility to provide for support services for active senior judges.

To provide for the compensation of active senior judges.

Applicability:

This rule shall apply to judicial employees and to senior judges and active senior judges of courts of record.

Statement of the Rule:

(1) *Support services.*

(A) The court executive of the court in which an active senior judge is serving shall make available clerical and bailiff services as needed in the performance of the judge's official duties. The court executive of the court in which an active senior judge is serving shall make available court reporting equipment and personnel in accordance with Rule 3-305 and Rule 4-201.

(B) The court executive of the court in which an active senior judge is serving shall execute the necessary notice of appointment for the case or matters to which the judge has been assigned.

(C) The court executive of the district in which an active senior judge resides shall provide the following assistance as needed:

(i) secretarial services;

(ii) mail services;

(iii) files and court documents;

(iv) travel arrangements; and

(v) preparation of reimbursement vouchers.

(D) Active senior judges shall be provided with a current set of the soft cover edition of the Utah Code and a subscription to Utah Advance Reports and Annotations, as provided by Rule 3-413.

(2) *Compensation.* Active senior judges shall be compensated at the rate and for the services and duties as set forth herein.

(A) Compensation for the performance of judicial duties related to the assignment of cases shall be at an hourly rate

by the Judicial Council. No published opinion rendered by the Committee or the Council shall identify the requesting party whose conduct is the subject of the opinion unless confidentiality of the requesting party is waived in writing.

(10) *Legal effect.* Compliance with an informal opinion shall be considered evidence of good faith compliance with the Code of Judicial Conduct. Formal opinions shall constitute a binding interpretation of the Code of Judicial Conduct.

Rules 3-110, 3-111. Repealed.

Rule 3-111.01. Goals of performance evaluation for certification for retention election.

Intent:

To specify the goals of evaluating judges for certification for retention election.

Applicability:

This rule shall apply to the Judicial Council and to the judges and commissioners of the courts of record and courts not of record.

Statement of the Rule:

The goals of the judicial performance evaluation program are to:

- (1) establish the criteria upon which judges will be evaluated, the standards against which judicial performance will be measured and the methods for fairly, accurately and reliably measuring judicial performance;
- (2) generate and to provide to judges and commissioners information about their performance;
- (3) establish the procedures by which the Council will evaluate and certify judges for retention election or reappointment;
- (4) establish the procedures by which the Council will evaluate and certify commissioners for reappointment;
- (5) provide meaningful and relevant information to the public or applicable appointing authority to assist in the decision to retain or reappoint judges and commissioners; and
- (6) protect the independence of judges and commissioners in their obligations under federal and state constitutions, federal and state statutes and court rules.

Rule 3-111.02. Judicial performance evaluation criteria.

Intent:

To specify the criteria upon which judges will be evaluated and certified.

Applicability:

This rule shall apply to the Judicial Council and to the judges and commissioners of the courts of record and courts not of record.

Statement of the Rule:

Judges and commissioners shall be evaluated and certified upon the following criteria.

- (1) *Integrity.* Factors considered may include but are not limited to:
 - (1)(A) avoidance of impropriety and appearance of impropriety;
 - (1)(B) freedom from personal bias;
 - (1)(C) ability to decide issues based on the law and the facts without regard to the identity of the parties or counsel, the popularity of the decision or concern for criticism;
 - (1)(D) impartiality of actions; and
 - (1)(E) compliance with the Code of Judicial Conduct.
- (2) *Knowledge and understanding of the law and procedures.* Factors considered may include but are not limited to:
 - (2)(A) the issuance of legally sound decisions;

(2)(B) understanding of the substantive, procedural, and evidentiary law of the state;

(2)(C) attentiveness to the factual and legal issues before the court; and

(2)(D) the proper application of judicial precedents and other appropriate sources of authority.

(3) *Ability to communicate.* Factors considered may include but are not limited to:

(3)(A) clarity of bench rulings and other oral communications;

(3)(B) quality of written opinions with specific focus on clarity and logic, and the ability to explain clearly the facts of a case and the legal precedents at issue; and

(3)(C) sensitivity to impact of demeanor and other nonverbal communications.

(4) *Preparation, attentiveness, dignity and control over proceedings.* Factors considered may include but are not limited to:

(4)(A) courtesy to all parties and participants; and

(4)(B) willingness to permit every person legally interested in a proceeding to be heard, unless precluded by law.

(5) *Skills as a manager.* Factors considered may include but are not limited to:

(5)(A) devoting appropriate time to all pending matters;

(5)(B) discharging administrative responsibilities diligently; and

(5)(C) where responsibility exists for a calendar, knowledge of the number, age, and status of pending cases.

(6) *Punctuality.* Factors considered may include but are not limited to:

(6)(A) the prompt disposition of pending matters;

(6)(B) meeting commitments on time and according to rules of the court; and

(6)(C) compliance with the case processing time standard established by the Council.

(7) *Service to the profession and the public.* Factors considered may include but are not limited to:

(7)(A) attendance at and participation in judicial and continuing legal education programs;

(7)(B) consistent with the Code of Judicial Conduct, participation in organizations devoted to improving the justice system;

(7)(C) consistent with the highest principles of the law, ensuring that the court is serving the public and the justice system to the best of its ability and in such a manner as to instill confidence in the court system; and

(7)(D) service within the organizations of the judicial branch of government and in leadership positions within the judicial branch of government, such as presiding judge, Judicial Council, Boards of Judges, and standing and ad hoc committees.

(8) *Effectiveness in working with other judges, commissioners and court personnel.* Factors considered may include but are not limited to:

(8)(A) when part of a multi-judge panel, exchanging ideas and opinions with other judges during the decision-making process;

(8)(B) critiquing the work of colleagues;

(8)(C) facilitating the administrative responsibilities of other judges and commissioners; and

(8)(D) effectively working with court staff.

Rule 3-111.03. Standards of judicial performance.

Intent:

To specify the standards against which judicial performance will be measured and the methods for fairly, accurately and reliably measuring judicial performance.

2004

Applicability:

This rule shall apply to the Judicial Council and, except as otherwise provided, to the judges and commissioners of the courts of record and not of record.

Subsection (2)(A) shall apply to the judges and commissioners of the courts of record.

Subsection (2)(B) shall apply to the judges of the district court who conduct jury trials.

For judges standing for retention election in 2004 and beyond and for commissioners subject to reappointment in 2003 and beyond, Subsection (2)(C) shall apply from the effective date of the rule until the evaluation by the Council or for the judge's or commissioner's term of office, whichever is shorter. Judges standing for retention election in 2002 and commissioners subject to reappointment in 2002 shall meet the case under advisement standard as it existed prior to the effective date of this rule. (Former Rule 3-111(3)(C).)

Statement of the Rule:

(1)(A) A judge standing for retention election or reappointment, or commissioner standing for reappointment, shall be evaluated for compliance with the standards set forth in this rule.

(1)(B) No evaluation shall be based upon a criterion or standard in effect for less than two years. However, the methodology for measurement may change periodically. Evaluation shall be based upon performance during the current term of office.

(2) Standards of performance.**(2)(A) Survey of attorneys.**

(2)(A)(i) The Council shall measure satisfactory performance by a sample survey of the attorneys appearing before the judge or commissioner during the preceding two years or such shorter period for which the judge or commissioner is being evaluated. The Council shall measure satisfactory performance based on the results of the final survey conducted during a judge's or commissioner's term of office, subject to the discretion of a judge serving an abbreviated initial term not to participate in a second survey under Section (2)(A)(viii) of this rule.

(2)(A)(ii) *Survey scoring.* The survey shall be scored as follows.

(2)(A)(ii)(a) Each question of the attorney survey will have six possible responses: Excellent, More Than Adequate, Adequate, Less Than Adequate, Inadequate, or No Personal Knowledge. A favorable response is Excellent, More Than Adequate or Adequate.

(2)(A)(ii)(b) Each question shall be scored by dividing the total number of favorable responses by the total number of all responses, excluding the "No Personal Knowledge" responses. A satisfactory score for a question is achieved when the ratio of favorable responses is 70% or greater.

(2)(A)(ii)(c) A judge's or commissioner's performance is satisfactory if:

(2)(A)(ii)(c)(1) at least 75% of the questions have a satisfactory score; and

(2)(A)(ii)(c)(2) the favorable responses when divided by the total number of all responses, excluding "No Personal Knowledge" responses, is 70% or greater.

(2)(A)(iii) *Surveyor.* As used in this Code, the term "Surveyor" means the organization or individual awarded a contract through procedures established by the state procurement code to survey respondents regarding the performance of judges.

(2)(A)(iv) *Survey respondents.* The clerk for the judge or commissioner or the Administrative Office of the Courts shall identify as potential respondents all lawyers who have appeared before the judge or commissioner at a hearing or trial during the preceding two year period or such shorter period for which the judge or commissioner is being evaluated. The judge

or commissioner shall not review the list of potential respondents.

(2)(A)(v) Exclusion from survey respondents.

(2)(A)(v)(a) A lawyer who has been appointed as a judge or commissioner shall not be a respondent in the survey.

(2)(A)(v)(b) By certifying that one or more of the following conditions applies, the judge or commissioner may exclude an attorney from the list of respondents: The judge or commissioner

(2)(A)(v)(b)(1) has referred the lawyer to the Utah State Bar for discipline,

(2)(A)(v)(b)(2) has found the lawyer in contempt of court,

(2)(A)(v)(b)(3) has sanctioned the lawyer pursuant to rules of procedure,

(2)(A)(v)(b)(4) has held the lawyer's law firm jointly responsible under Utah Rule of Civil Procedure 11(c)(1)(A),

(2)(A)(v)(b)(5) has presided in a civil or criminal proceeding to which the lawyer is a party, or

(2)(A)(v)(b)(6) has been the subject of an affidavit of bias or prejudice under Utah Rule of Civil Procedure 63 or Utah Rule of Criminal Procedure 29 filed by the attorney in which the attorney alleges animus of the judge or commissioner toward the attorney.

(2)(A)(v)(c) Other exclusions.

(2)(A)(v)(c)(1) A judge may request that the Judicial Council exclude from the survey an attorney who does not qualify for exclusion under (b) if the judge believes the attorney will not respond objectively to the survey. The request must be submitted within 14 days after receiving the form for excluding lawyers under (b).

(2)(A)(v)(c)(2) In the request, the judge shall explain why the attorney will not respond objectively to the survey. The judge shall explain why the attorney's behavior has not subjected the attorney to sanction under the rules of procedure, contempt or referral to the Bar.

(2)(A)(v)(c)(3) If the Management Committee determines that the attorney will not respond objectively to the survey, the Management Committee shall inform the Judicial Council for ratification. If the Judicial Council ratifies the determination, the Administrative Office of the Courts shall notify the Surveyor and the Surveyor shall exclude the attorney from the judge's respondent pool. The determination applies only to the pending attorney survey.

(2)(A)(vi) *Number of survey respondents.* For each judge or commissioner who is the subject of a survey, the Surveyor shall identify 180 respondents or all attorneys appearing before the judge or commissioner whichever is less.

(2)(A)(vii) *Factors in selecting respondents; response rate.* In selecting respondents from potential respondents, the Surveyor should favor attorneys with a greater number of appearances and attorneys with more recent appearances, and the Surveyor should limit to 12 the number of survey questionnaires to which an attorney is asked to respond. The Surveyor may balance these factors in assigning respondents to particular judges or commissioners. The Surveyor should pursue a response rate of 70% or more for each judge or commissioner. The goals of this paragraph are advisory and failure to meet the goals shall not invalidate the survey.

(2)(A)(viii) *Administration of the survey.* Judges with a six-year term of office shall be the subject of a survey in the fifth year of the term. Justices of the Supreme Court shall be the subject of a survey in the ninth year of the term. Newly appointed judges shall be the subject of a survey during their second year in office and, at their option, prior to their initial retention election. Court Commissioners shall be the subject of a survey approximately one year prior to the expiration of their term of appointment.

(2)(B) *Survey of jurors.* The Council shall measure satisfactory performance by a survey of the jurors appearing before

2004

the judge during the preceding two years or such shorter period for which the judge is being evaluated.

(2)(B)(i) *Survey responses.* Each question will have four possible responses: Yes, No, No Opinion, and No Opportunity to Observe. A note card on which the juror can provide anonymous comments to the judge shall be attached to the survey questionnaire.

(2)(B)(ii) *Survey scoring.* The survey shall be scored as follows:

(2)(B)(ii)(a) A favorable response is Yes.

(2)(B)(ii)(b) Each question shall be scored by dividing the total number of Yes responses by the total number of Yes plus No responses.

(2)(B)(ii)(c) A satisfactory score for a question is achieved when the ratio of favorable responses is 70% or greater.

(2)(B)(ii)(d) A judge's performance is satisfactory if:

(2)(B)(ii)(d)(1) At least 75% of the questions on the survey have a satisfactory score; and

(2)(B)(ii)(d)(2) The Yes responses to all questions when divided by the total number of Yes plus No responses to all questions is 70% or greater.

(2)(B)(iii) *Administration of the survey.* All jurors rendering a verdict in a case and all jurors, including alternate jurors, with at least three hours of trial time with the judge shall have the opportunity to respond to the survey questionnaire.

(2)(B)(iii)(a) For jurors rendering a verdict. While the jurors are waiting for court to convene after declaring that they have reached a verdict, or as soon as possible after the jury has been discharged, the bailiff or clerk in charge of the jury shall provide the jurors with the evaluation questionnaires and comment note cards and two envelopes. One envelope will be preprinted with the mailing address of the Surveyor; the other will be preprinted with the name of the judge. The forms will instruct the jurors to place the comment note cards in the envelope with the judge's name, to place the survey questionnaires, completed and uncompleted, in the envelope with the Surveyor's name, and to seal the envelopes. The bailiff or clerk shall deliver the sealed envelopes to the respective addressees.

(2)(B)(iii)(b) For jurors not rendering a verdict. If a juror or alternate juror is discharged prior to rendering a verdict but after at least three hours of trial time with the judge, the bailiff or clerk in charge of the jury shall administer the questionnaire to the discharged juror in the same manner as in paragraph (a) above.

(2)(C) *Case under advisement standard.* A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge or commissioner for final determination. The Council shall measure satisfactory performance by the self declaration of the judge or commissioner or by reviewing the records of the court.

(2)(C)(i) A justice of the Supreme Court demonstrates satisfactory performance by circulating not more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year.

(2)(C)(ii) A judge of the Court of Appeals demonstrates satisfactory performance by:

(2)(C)(ii)(a) circulating not more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

(2)(C)(ii)(b) achieving a final average time to circulation of a principal opinion of not more than 120 days after submission.

(2)(C)(iii) A trial court judge or commissioner demonstrates satisfactory performance by holding:

(2)(C)(iii)(a) not more than an average of three cases per calendar year under advisement more than two months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

(2)(C)(iii)(b) no case under advisement more than six months after submission.

(2)(D) *Compliance with education standards.* Satisfactory performance is established if the judge meets the minimum education requirements established by this Code subject to the availability of in-state education programs. The Council shall measure satisfactory performance by the self declaration of the judge or commissioner or by reviewing the records of the state court administrator.

(2)(E) *Substantial compliance with Code of Judicial Conduct.* Satisfactory performance is established if the response of the judge or commissioner demonstrates substantial compliance with the Code of Judicial Conduct, if the Council finds the responsive information to be complete and correct and if the Council's review of formal and informal sanctions lead the Council to conclude the judge is in substantial compliance with the Code of Judicial Conduct.

(2)(F) *Physical and mental competence.* Satisfactory performance is established if the response of the judge or commissioner demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.

Rule 3-111.04. Evaluation and certification of judges and commissioners.

Intent:

To establish the procedures by which the Council will evaluate and certify judges for retention election or reappointment.

To establish the procedures by which the Council will evaluate and certify commissioners for reappointment.

Applicability:

This rule shall apply to the Judicial Council and to the judges and commissioners of the courts of record and courts not of record.

Statement of the Rule:

(1) At its meeting in December of odd-numbered years, the Council shall begin the process of determining whether the judges subject to election at the next general election meet the standards of performance provided for in this rule. The Administrative Office of the Courts shall assemble all evaluation information, including:

(1)(A) attorney and juror survey scores;

(1)(B) judicial education records;

(1)(C) self declaration forms;

(1)(D) records of formal and informal sanctions by the Supreme Court; and

(1)(E) any information requested by the Council.

(2)(A) Prior to the meeting the Administrative Office of the Courts shall deliver the records to the Council and to the judges being evaluated.

(2)(B) In a session closed in compliance with Rule 2-103, the Council shall consider the evaluation information and make a preliminary finding of whether a judge met the performance standards established by Rule 3-111.03.

(2)(C) If the Council finds the judge met the performance standards, it is presumed the Council will certify the judge be retained in the general election. If the Council finds the judge did not meet the performance standards, it is presumed the Council will not certify the judge be retained in the general election. The Council may certify the judge for retention election or withhold decision until after meeting with the judge.

(2)(D) A presumption against certification may be overcome by a showing of good cause to the contrary. A presumption in favor of certification may be overcome by:

2004

(2)(D)(i) reliable information showing non-compliance with a performance standard; or

(2)(D)(ii) formal or informal sanctions by the Supreme Court of sufficient gravity or number or both to demonstrate lack of substantial compliance with the Code of Judicial Conduct.

(3) At the request of the Council the judge shall meet with the Council in January. At the request of the Council the presiding judge and other reviewing judge shall report to the Council any meetings held with the subject judge, the steps toward self-improvement identified as a result of those meetings, and the efforts to complete those steps. Not later than 5 days after the December meeting, the Administrative Office of the Courts shall deliver to the judges being evaluated notice of the Council's action and any records not already delivered to the judge. If the judge is to meet with the Council, the notice shall contain an adequate description of the reasons the Council has withheld its decision and the date by which the judge is to deliver written materials. The Administrative Office of the Courts shall deliver copies of all materials to the Council and to the judge prior to the January meeting.

(4)(A) At its January meeting in a session closed in accordance with Rule 2-103, the Council shall provide to the judge adequate time to present evidence and arguments in favor of certification. Any member of the Council may present evidence and arguments of which the judge has had notice opposed to certification. The burden is on the person arguing against the presumed certification. The Council may determine the order of presentation. The Council may continue the closed meeting with the judge to the February Council meeting.

(4)(B) At its January or February meeting in open session, the Council shall approve its final findings and certification regarding all judges standing for retention election at the next general election.

(5) Between the date of certification and the next general election, the Chief Justice shall notify the Judicial Council of any order of sanction entered by the Supreme Court against a judge certified by the Council.

(6) Between the date of certification and the next general election, a member of the Judicial Council voting in the majority may move to reconsider the certification of a judge and present to the Council facts material to certification occurring before or since certification, which, if known at the time of certification, may have led to a contrary result. If the motion to reconsider passes, the Council shall notify and meet with the judge in like manner to the notification and meeting under paragraphs (3) and (4) of this rule. After the meeting the Council shall decide in open session whether to certify the judge. If the Council changes its original certification decision, it shall use the most effective means available to publish its final decision.

(7) The Council shall approve the statements and descriptions required by § 20A-7-702 for the voter information pamphlet. The judge may review and edit the biographical summary. The Administrative Office of the Courts shall promptly deliver the approved statement regarding a judge to the judge and shall deliver the approved statement regarding all judges to the Lt. Governor no later than August 1. Upon delivery to the Lt. Governor, the Administrative Office of the Courts shall publish the statement regarding all judges on the Internet.

(8) For municipal justice court judges, the Council shall use the same evaluation process as for judges of the courts of record, but the process shall begin in December of even numbered years, approximately 14 months prior to the expiration of the municipal judges' terms of office. The Administrative Office of the Courts shall deliver a statement similar in content and purpose to the one described in § 20A-7-702 to the respective judges and to the Mayor of the judges' jurisdictions no later than August 1 prior to the expiration of the municipal

judges' terms of office. The Administrative Office of the Courts shall publish the statements on the Internet.

(9) For commissioners, the Council shall use the same evaluation process as for judges, but the Council may remove the commissioner upon the same grounds and statement of reasons for which it could certify a judge not be retained. The timing of meetings shall be such as to conclude all steps at least 60 days prior to expiration of the commissioner's term of office. The Administrative Office of the Courts shall notify the commissioner of the dates of all events and meetings. The Administrative Office of the Courts shall promptly notify the presiding judge of the Council's finding, certification and statement of reasons.

Rule 3-111.05. Evaluation and certification of senior judges.

Intent:

To establish a performance evaluation program for active senior judges.

Applicability:

This rule shall apply to the Judicial Council and to active senior judges of courts of record.

Statement of the Rule:

(1) *Criteria of performance.* Active senior judges shall be evaluated and certified using the performance criteria in Rule 3-111.02.

(2) *Evaluation information.* The evaluation and certification shall be based upon performance during the senior judge's current term of office. The following information shall be used:

(2)(A) *Survey of attorneys.*

(2)(A)(i) The Council shall measure performance by a survey of the attorneys appearing before the senior judge. The survey shall provide the opportunity for the respondent to comment to the Council.

(2)(A)(ii) The survey shall be administered by the Surveyor.

(2)(A)(iii) The Administrative Office of the Courts shall identify as potential respondents all lawyers who have appeared before the senior judge at a hearing or trial during the senior judge's current term. The senior judge shall not review the list of potential respondents. The Surveyor shall identify 180 respondents or all the attorneys appearing before the senior judge whichever is less.

(2)(A)(iv) The Surveyor shall report to the Council the number and percentage of respondents for each of the possible responses on each question.

(2)(B) *Survey of presiding judges and court staff.* The Council shall measure performance by a survey of all presiding judges and trial court executives of districts in which the judge has been assigned. The Administrative Office of the Courts shall distribute survey forms with instructions to return completed surveys to the Surveyor.

(2)(C) The Surveyor shall provide the Council with a report of all survey responses for the senior judge's current term.

(3) *Standards of performance.*

(3)(A) *Surveys.* The Judicial Council shall determine whether the senior judge's scores reported on the surveys are satisfactory.

(3)(B) *Cases under advisement.* The Council shall measure satisfactory performance by the self-declaration of the senior judge or by review of the records of the court. The senior judge shall demonstrate satisfactory performance by complying with the cases under advisement standard in Rule 3-111.03 for the court in which the judge has been assigned.

(3)(C) *Compliance with education standards.* Satisfactory performance is established if the senior judge meets the minimum education requirements established by this Code subject to the availability of in-state education programs. The Council shall measure satisfactory performance during the

curre

review

(3)(

duct.

the s

the C

respo

(3)(

manc

demo

office

comp

an ex

(4)(

point

Court

subm

other

provi

prior

infor

that t

senior

judge

(4)(

meet

shall

Coun

senior

of the

date t

The A

all me

meeti

(4)(

Rule

adequ

certifi

and a

certifi

tation

current term by the self declaration of the senior judge or by review of records of the state court administrator.

(3)(D) *Substantial compliance with Code of Judicial Conduct.* Satisfactory performance is established if the response of the senior judge demonstrates substantial compliance with the Code of Judicial Conduct and if the Council finds the responsive information to be complete and correct.

(3)(E) *Physical and mental competence.* Satisfactory performance is established if the response of the senior judge demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.

(4)(A) *Judicial Council action.* Upon application for appointment under Rule 11-201, the Administrative Office of the Courts shall provide to the Judicial Council the information submitted by the senior judge as well as survey scores and any other relevant information to the Council. The information provided to the Council shall be provided to the senior judge prior to consideration by the Council. After considering all information, the Council may certify to the Supreme Court that the applicant meets the qualifications for being an active senior judge or withhold decision until after meeting with the judge.

(4)(B) At the request of the Council the senior judge shall meet with the Council. The Administrative Office of the Courts shall deliver to the senior judge being evaluated notice of the Council's action and any records not already delivered to the senior judge. The notice shall contain an adequate description of the reasons the Council has withheld its decision and the date by which the senior judge is to deliver written materials. The Administrative Office of the Courts shall deliver copies of all materials to the Council and to the senior judge prior to the meeting.

(4)(C) At the meeting in a session closed in accordance with Rule 2-103, the Council shall provide to the senior judge adequate time to present evidence and arguments in favor of certification. Any member of the Council may present evidence and arguments of which the judge has had notice opposed to certification. The Council may determine the order of presentation.

Rule 3-111.06. Administration of the judicial performance evaluation and certification program.

Intent:

To provide for the administration of the performance evaluation program for evaluation and certification.

Applicability:

This rule shall apply to the Judicial Council and to the Standing Committee on Judicial Performance Evaluation.

Statement of the Rule:

(1) The performance evaluation program shall use professionally recognized methods of data collection which may include surveys, onsite visits, caseload management data and personal interviews. Information shall be obtained from multiple sources to provide balanced information. Information from individuals shall be based on personal knowledge of the judge's or commissioner's performance.

(2) The Standing Committee on Judicial Performance Evaluation shall:

(2)(A) propose to the Council a schedule of recommended activities and procedures by which to administer the evaluation and certification program;

(2)(B) with the Council's approval, provide a schedule of activities and procedures to all judges and commissioners;

(2)(C) report to the Council recommendations for improving the evaluation and certification program; and

(2)(D) propose to the Council any surveys and amendments. Subjects inquired into by a survey shall be drawn from but need not include all of the criteria established by Rule 3-111.02.

(3) For each judge and commissioner standing for retention election or reappointment, the Surveyor shall provide to the Council the number and percentage of respondents for each of the possible responses on each survey question. Without identifying individual judges or commissioners, the Surveyor shall provide the Council with the survey results for each court level and geographic region.

(4)(A) Except as provided in this Code, judicial performance records relied upon by the Council in making its findings and certifications are classified as public records upon approval of the final findings and certifications. Prior to the Council's preliminary findings and certifications, survey results shall be marked with a code number in order to withhold from the Council the identity of the judge or commissioner. Upon being classified as a public record, the records shall identify the judge to whom they pertain.

(4)(B) The survey results for each court level and geographic region, without identifying individual judges or commissioners, are classified as public records.

(4)(C) Respondents to surveys shall be anonymous.

(5) Geographic regions are:

(5)(a) Region 1: Judicial Districts 5, 6, 7, and 8;

(5)(b) Region 2: Judicial Districts 1 and 2;

(5)(c) Region 3: Judicial District 3;

(5)(d) Region 4: Judicial District 4; and

(5)(e) Region 5: The Supreme Court and the Court of Appeals.

Rule 3-112. Justice Court Standards Committee.

Intent:

To establish the responsibility for certifying new justice courts and recertifying existing justice courts.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) *Responsibilities of Justice Court Standards Committee.* The Committee shall be responsible for the following:

(1)(A) To recommend to the Council:

(1)(A)(i) minimum guidelines which demonstrate the need for a justice court, and which take into account the population, the number of case filings, the public convenience, the availability of law enforcement agencies and court support services, the proximity of other courts and other factors, and

(1)(A)(ii) operational standards for statutorily required support services such as public facilities, clerical support, bailiff services, prosecution and indigent defense services.

(1)(B) To recommend to the Council the creation and recertification of justice courts.

(1)(C) To recommend to the Council procedures for reviewing requests for waivers or extensions of time to meet guidelines or standards.

(2) *Adoption and review of standards.*

(2)(A) Proposed minimum guidelines for establishing the need for court and operational standards shall be distributed for comment to affected agencies and organizations before submission to the Council for approval.

(2)(B) Operational standards shall be reviewed and updated every two years, beginning in 1992.

(3) *Publication.* Guidelines for establishing the need for a court, operational standards and the procedures for requesting waivers or extensions of time to meet the standards shall be made available upon request.

(6)(A) Approve or modify the opinion and direct the Committee to release the opinion, as initially drafted or modified, to the requesting party as an informal opinion of the Committee, or

(6)(B) Approve or modify the opinion and release the opinion as a formal opinion of the Council.

(7) *Reconsideration of opinions.*

(7)(A) Within 10 days of the issuance of an opinion, the requesting party or a Committee member may request reconsideration. Requests for reconsideration of informal opinions must be made in the first instance to the Committee and then to the Judicial Council. Requests for reconsideration of formal opinions shall be made to the Judicial Council. Requests for reconsideration shall be in writing addressed to the Chair of the Committee or the Presiding Officer of the Council, through General Counsel, and shall include the following:

(7)(A)(i) A brief statement explaining the reasons for reconsideration.

(7)(A)(ii) Identification of any new facts or authorities not previously submitted or considered.

(7)(B) The Committee or Council shall consider the request as soon as practicable and may take the following action:

(7)(B)(i) Approve the request for reconsideration and modify the opinion;

(7)(B)(ii) Approve the request for reconsideration and approve the opinion as originally published; or

(7)(B)(iii) Deny the request.

(7)(C) The Committee shall be kept advised of the status of any request to reconsider an opinion.

(8) *Recusal.* Circumstances which require recusal of a judge shall require recusal of a Committee member from participation in Committee action. If the chair is recused, a majority of the remaining members shall select a chair pro tempore. If a member is recused, the chair may appoint a judge of the same court and if applicable the same geographic division or a lawyer to assist the Committee with its deliberations. Preference should be given to former members of the Committee.

(9) *Publication.* All opinions of the Committee and the Judicial Council shall be numbered upon issuance, compiled annually and published periodically in a publication approved by the Judicial Council. No published opinion rendered by the Committee or the Council shall identify the requesting party whose conduct is the subject of the opinion unless confidentiality of the requesting party is waived in writing.

(10) *Legal effect.* Compliance with an informal opinion shall be considered evidence of good faith compliance with the Code of Judicial Conduct. Formal opinions shall constitute a binding interpretation of the Code of Judicial Conduct.

Rules 3-110, 3-111. Repealed.

Rule 3-111.01. Goals of performance evaluation for certification for retention election.

Intent:

To specify the goals of evaluating judges for certification for retention election.

Applicability:

This rule shall apply to the Judicial Council and to the judges and commissioners of the courts of record and courts not of record.

Statement of the Rule:

The goals of the judicial performance evaluation program are to:

(1) establish the criteria upon which judges will be evaluated, the standards against which judicial performance will be measured and the methods for fairly, accurately and reliably measuring judicial performance;

(2) generate and to provide to judges and commissioners information about their performance;

(3) establish the procedures by which the Council will evaluate and certify judges for retention election or reappointment;

(4) establish the procedures by which the Council will evaluate and certify commissioners for reappointment;

(5) provide meaningful and relevant information to the public or applicable appointing authority to assist in the decision to retain or reappoint judges and commissioners; and

(6) protect the independence of judges and commissioners in their obligations under federal and state constitutions, federal and state statutes and court rules.

Rule 3-111.02. Judicial performance evaluation criteria.

Intent:

To specify the criteria upon which judges will be evaluated and certified.

Applicability:

This rule shall apply to the Judicial Council and to the judges and commissioners of the courts of record and courts not of record.

Statement of the Rule:

Judges and commissioners shall be evaluated and certified upon the following criteria.

(1) *Integrity.* Factors considered may include but are not limited to:

(1)(A) avoidance of impropriety and appearance of impropriety;

(1)(B) freedom from personal bias;

(1)(C) ability to decide issues based on the law and the facts without regard to the identity of the parties or counsel, the popularity of the decision or concern for criticism;

(1)(D) impartiality of actions; and

(1)(E) compliance with the Code of Judicial Conduct.

(2) *Knowledge and understanding of the law and procedures.* Factors considered may include but are not limited to:

(2)(A) the issuance of legally sound decisions;

(2)(B) understanding of the substantive, procedural, and evidentiary law of the state;

(2)(C) attentiveness to the factual and legal issues before the court; and

(2)(D) the proper application of judicial precedents and other appropriate sources of authority.

(3) *Ability to communicate.* Factors considered may include but are not limited to:

(3)(A) clarity of bench rulings and other oral communications;

(3)(B) quality of written opinions with specific focus on clarity and logic, and the ability to explain clearly the facts of a case and the legal precedents at issue; and

(3)(C) sensitivity to impact of demeanor and other nonverbal communications.

(4) *Preparation, attentiveness, dignity and control over proceedings.* Factors considered may include but are not limited to:

(4)(A) courtesy to all parties and participants; and

(4)(B) willingness to permit every person legally interested in a proceeding to be heard, unless precluded by law.

(5) *Skills as a manager.* Factors considered may include but are not limited to:

(5)(A) devoting appropriate time to all pending matters;

(5)(B) discharging administrative responsibilities diligently; and

(5)(C) where responsibility exists for a calendar, knowledge of the number, age, and status of pending cases.

2006

sits or, in district court cases involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial Administration, assignment by the supervising tax judge with the approval of the presiding officer of the Council.

(3)(B) Any active judge of a court of record may serve temporarily as the judge of a court with different jurisdiction in the same or a different judicial district upon assignment by the presiding officer of the Council or assignment by the state court administrator with the approval of the presiding officer of the Council.

(3)(C) The assignment shall be made only after consideration of the judge's calendar. The assignment may be for a special or general assignment in a specific court or generally within that level of court and shall be for a specific period of time, or for the duration of a specific case. Full time assignments in excess of 30 days in a calendar year shall require the concurrence of the assigned judge. The state court administrator shall report all assignments to the Council on an annual basis.

(3)(D) Requests for the assignment of a judge shall be conveyed, through the presiding judge, to the person with authority to make the assignment under paragraphs (A) and (B). A judge who is assigned temporarily to another court shall have the same powers as a judge of that court.

(4) *Notice of assignments* made under this rule shall be made in writing, a copy of which shall be sent to the state court administrator.

(5) *Schedule of trials or court sessions.* The state court administrator, under the supervision of the presiding officer of the Council, may schedule trials or court sessions and designate a judge to preside, assign judges within courts and throughout the state, reassign cases to judges, and change the county for trial of any case if no party to the litigation files timely objections to the change.

Rule 3-109. Ethics Advisory Committee.

Intent:

To establish the Ethics Advisory Committee as a resource for judges to request advice on the interpretation and application of the Code of Judicial Conduct.

To establish a process for recording and disseminating opinions on judicial ethics.

Applicability:

This rule shall apply to all employees of the judicial branch of government who are subject to the Code of Judicial Conduct.

Statement of the Rule:

(1) *The Ethics Advisory Committee is responsible for providing opinions on the interpretation and application of the Code of Judicial Conduct to specific factual situations.*

(2) *The Administrative Office shall provide staff support through the Office of General Counsel and shall distribute opinions in accordance with this rule.*

(3) *Duties of the committee.*

(3)(A) Preparation of opinions.

(3)(A)(i) The Ethics Advisory Committee shall, in appropriate cases, prepare and publish written opinions concerning the ethical propriety of professional or personal conduct when requested to do so by the Judicial Council, the Boards of Judges, judicial officers and employees, judges pro tempore or candidates for judicial office.

(3)(A)(ii) The Committee shall respond to an inquiry into the conduct of others only if

(3)(A)(ii)(a) the inquiry is made by the Judicial Council or a Board of Judges; and

(3)(A)(ii)(b) the inquiry is limited to matters of general interest to the judiciary or a particular court level.

(3)(A)(iii) The Committee shall not answer requests for legal opinions or inquiries concerning conduct which has already taken place, unless it is of an ongoing nature.

(3)(B) The Committee may receive proposals from the Judicial Council, the Boards of Judges, and judicial officers and employees or initiate its own proposals for necessary or advisable changes in the Code of Judicial Conduct and shall submit appropriate recommendations to the Supreme Court for consideration.

(3)(C) The Committee shall develop and provide educational programs to assist judicial officers and employees in their understanding of the Code of Judicial Conduct and the roles of the Judicial Conduct Commission, the Judicial Council and the Supreme Court in issues of professional conduct.

(4) *Submission of requests.*

(4)(A) Requests for advisory opinions shall be in writing addressed to the Chair of the Committee, through General Counsel, and shall include the following:

(4)(A)(i) A brief statement of the contemplated conduct.

(4)(A)(ii) Reference to the relevant section(s) of the Code of Judicial Conduct.

(4)(A)(iii) Citation to any relevant ethics opinions or other authority, if known.

(4)(B) The request for an opinion and the identity of the requesting party is confidential unless waived in writing by the requesting party.

(5) *Consideration of requests.*

(5)(A) As used in these rules, the term "informal opinion" refers to an opinion which has been prepared and released by the Committee. The term "formal opinion" refers to an opinion which has been considered and released by the Judicial Council. "Formal opinions" will usually be reserved for situations of substantial and general interest to the public or the judiciary.

(5)(B) Upon receipt of a request for an advisory opinion, General Counsel shall research the issue and prepare a preliminary recommendation for the Committee's consideration. The opinion request, preliminary recommendation and supporting authorities shall be distributed to the Committee members within 15 days of receipt of the request.

(5)(C) The Committee members shall review the request and recommendation and submit comments to General Counsel within 10 days of their receipt of the request and preliminary recommendation.

(5)(D) General Counsel shall review the comments submitted by the Committee members and, within 10 days of receipt of the comments, prepare a responsive informal opinion in writing which shall be distributed to the Committee members for approval.

(5)(E) A majority vote of the Committee members is required for issuance of an opinion and may be obtained by telephone or, upon the request of a Committee member, the Chair may continue the vote until the next meeting of the Committee.

(5)(F) Informal opinions shall be released to the requesting party within 45 days of receipt of the request unless the opinion is contrary to previous opinions of the Committee or the matter is referred to the Judicial Council.

(5)(G) Upon the written request of a party and for good cause, the Committee may issue a response to a request within a shorter period of time than provided for in these rules. The requesting party has the responsibility of establishing that the request is of an emergency nature and requires an abbreviated response time.

(6) *Referral to Judicial Council.* Upon an affirmative vote of a majority of the Committee members, a motion of the requesting party, or a motion by the Judicial Council, an opinion request and Committee recommendation shall be referred to the Judicial Council for consideration. Within 60 days of receipt of the referral, the Council shall consider the request and recommendation and take the following action:

(6)(A) mittee to the r tee, or

(6)(B) ion as :

(7) R

(7)(A) request

siderati

must be

to the J

opinion.

reconsi

the Con

General

(7)(A) siderati

(7)(A) previous

(7)(B) as soon

(7)(B) ify the c

(7)(B) prove th

(7)(B) (7)(C)

any requ

(8) Re shall rec

tion in C

the rem:

member

court ar

lawyer t

ence sho

(9) Pu

Judicial

annually

by the Ji

Commiti

whose cc

ality of t

(10) L

be consi

of Judici

ing inter

Rules 3-

Rule 3-1

tificat

Intent:

To spec

retention

Applical

This ri

judges a

not of rec

Stateme

The go

are to:

(1) est:

ated, the

measured

measurin

2006

(6) *Punctuality.* Factors considered may include but are not limited to:

(6)(A) the prompt disposition of pending matters;
(6)(B) meeting commitments on time and according to rules of the court; and

(6)(C) compliance with the case processing time standard established by the Council.

(7) *Service to the profession and the public.* Factors considered may include but are not limited to:

(7)(A) attendance at and participation in judicial and continuing legal education programs;

(7)(B) consistent with the Code of Judicial Conduct, participation in organizations devoted to improving the justice system;

(7)(C) consistent with the highest principles of the law, ensuring that the court is serving the public and the justice system to the best of its ability and in such a manner as to instill confidence in the court system; and

(7)(D) service within the organizations of the judicial branch of government and in leadership positions within the judicial branch of government, such as presiding judge, Judicial Council, Boards of Judges, and standing and ad hoc committees.

(8) *Effectiveness in working with other judges, commissioners and court personnel.* Factors considered may include but are not limited to:

(8)(A) when part of a multi-judge panel, exchanging ideas and opinions with other judges during the decision-making process;

(8)(B) critiquing the work of colleagues;

(8)(C) facilitating the administrative responsibilities of other judges and commissioners; and

(8)(D) effectively working with court staff.

Rule 3-111.03. Standards of judicial performance.

Intent:

To specify the standards against which judicial performance will be measured and the methods for fairly, accurately and reliably measuring judicial performance.

Applicability:

This rule shall apply to the Judicial Council and, except as otherwise provided, to the judges and commissioners of the courts of record and not of record.

Subsection (2)(A) shall apply to the judges and commissioners of the courts of record.

Subsection (2)(B) shall apply to the judges of the district court who conduct jury trials.

For judges standing for retention election in 2004 and beyond and for commissioners subject to reappointment in 2003 and beyond, Subsection (2)(C) shall apply from the effective date of the rule until the evaluation by the Council or for the judge's or commissioner's term of office, whichever is shorter. Judges standing for retention election in 2002 and commissioners subject to reappointment in 2002 shall meet the case under advisement standard as it existed prior to the effective date of this rule. (Former Rule 3-111(3)(C).)

Statement of the Rule:

(1)(A) A judge standing for retention election or reappointment, or commissioner standing for reappointment, shall be evaluated for compliance with the standards set forth in this rule.

(1)(B) No evaluation shall be based upon a criterion or standard in effect for less than two years. However, the methodology for measurement may change periodically. Evaluation shall be based upon performance during the current term of office.

(2) *Standards of performance.*

(2)(A) *Survey of attorneys.*

(2)(A)(i) The Council shall measure satisfactory performance by a sample survey of the attorneys appearing before the judge or commissioner during the preceding two years or such shorter period for which the judge or commissioner is being evaluated. The Council shall measure satisfactory performance based on the results of the final survey conducted during a judge's or commissioner's term of office, subject to the discretion of a judge serving an abbreviated initial term not to participate in a second survey under Section (2)(A)(viii) of this rule.

(2)(A)(ii) *Survey scoring.* The survey shall be scored as follows.

(2)(A)(ii)(a) Each question of the attorney survey will have six possible responses: Excellent, More Than Adequate, Adequate, Less Than Adequate, Inadequate, or No Personal Knowledge. A favorable response is Excellent, More Than Adequate or Adequate.

(2)(A)(ii)(b) Each question shall be scored by dividing the total number of favorable responses by the total number of all responses, excluding the "No Personal Knowledge" responses. A satisfactory score for a question is achieved when the ratio of favorable responses is 70% or greater.

(2)(A)(ii)(c) A judge's or commissioner's performance is satisfactory if:

(2)(A)(ii)(c)(1) at least 75% of the questions have a satisfactory score; and

(2)(A)(ii)(c)(2) the favorable responses when divided by the total number of all responses, excluding "No Personal Knowledge" responses, is 70% or greater.

(2)(A)(iii) *Surveyor.* As used in this Code, the term "Surveyor" means the organization or individual awarded a contract through procedures established by the state procurement code to survey respondents regarding the performance of judges.

(2)(A)(iv) *Survey respondents.* The clerk for the judge or commissioner or the Administrative Office of the Courts shall separately identify as potential respondents all lawyers who have appeared before the judge or commissioner at a hearing or trial during the preceding two year period or such shorter period for which the judge or commissioner is being evaluated.

(2)(A)(v) *Exclusion from survey respondents.*

(2)(A)(v)(a) A lawyer who has been appointed as a judge or commissioner shall not be a respondent in the survey. A lawyer who is suspended or disbarred or who has resigned under discipline shall not be a respondent in the survey.

(2)(A)(v)(b) By certifying that one or more of the following conditions applies, the judge or commissioner may exclude an attorney from the list of respondents: The judge or commissioner

(2)(A)(v)(b)(1) has referred the lawyer to the Utah State Bar for discipline,

(2)(A)(v)(b)(2) has found the lawyer in contempt of court,

(2)(A)(v)(b)(3) has sanctioned the lawyer pursuant to rules of procedure,

(2)(A)(v)(b)(4) has held the lawyer's law firm jointly responsible under Utah Rule of Civil Procedure 11(c)(1)(A),

(2)(A)(v)(b)(5) has presided in a civil or criminal proceeding to which the lawyer is a party, or

(2)(A)(v)(b)(6) has been the subject of an affidavit of bias or prejudice under Utah Rule of Civil Procedure 63 or Utah Rule of Criminal Procedure 29 filed by the attorney in which the attorney alleges animus of the judge or commissioner toward the attorney.

(2)(A)(v)(c) *Other exclusions.*

(2)(A)(v)(c)(1) A judge may request that the Judicial Council exclude from the survey an attorney who does not qualify for exclusion under (b) if the judge believes the attorney will not respond objectively to the survey. The request must be

2006

subm
ing la
(2)(
the a
judge
subje
dure,
(2)(
that t
Mana
ratific
the A
veyor
judge
pendi:
(2)(
comm
shall
before
(2)(
selecti
veyor
then :
Surve
naires
may b
ular ju
respor
The go
the go
(2)(
six-ye
fifth y
the su
appoin
second
retenti
of a su
their t
(2)(
tory pe
the ju
period
(2)(
possibl
to Ob
anonym
survey
(2)(
follows
(2)(
(2)(
total n
No resq
(2)(
when t
(2)(
(2)(
have a
(2)(
divided
questio
(2)(
a verdu
with at
the opp

submitted within 14 days after receiving the form for excluding lawyers under (b).

(2)(A)(v)(c)(2) In the request, the judge shall explain why the attorney will not respond objectively to the survey. The judge shall explain why the attorney's behavior has not subjected the attorney to sanction under the rules of procedure, contempt or referral to the Bar.

(2)(A)(v)(c)(3) If the Management Committee determines that the attorney will not respond objectively to the survey, the Management Committee shall inform the Judicial Council for ratification. If the Judicial Council ratifies the determination, the Administrative Office of the Courts shall notify the Surveyor and the Surveyor shall exclude the attorney from the judge's respondent pool. The determination applies only to the pending attorney survey.

(2)(A)(vi) *Number of survey respondents.* For each judge or commissioner who is the subject of a survey, the Surveyor shall identify 180 respondents or all attorneys appearing before the judge or commissioner whichever is less.

(2)(A)(vii) *Factors in selecting respondents; response rate.* In selecting respondents from potential respondents, the Surveyor should first select attorneys with a trial appearance and then attorneys with a greater number of appearances. The Surveyor should limit to 12 the number of survey questionnaires to which an attorney is asked to respond. The Surveyor may balance these factors in assigning respondents to particular judges or commissioners. The Surveyor should pursue a response rate of 70% or more for each judge or commissioner. The goals of this paragraph are advisory and failure to meet the goals shall not invalidate the survey.

(2)(A)(viii) *Administration of the survey.* Judges with a six-year term of office shall be the subject of a survey in the fifth year of the term. Justices of the Supreme Court shall be the subject of a survey in the ninth year of the term. Newly appointed judges shall be the subject of a survey during their second year in office and, at their option, prior to their initial retention election. Court Commissioners shall be the subject of a survey approximately one year prior to the expiration of their term of appointment.

(2)(B) *Survey of jurors.* The Council shall measure satisfactory performance by a survey of the jurors appearing before the judge during the preceding two years or such shorter period for which the judge is being evaluated.

(2)(B)(i) *Survey responses.* Each question will have four possible responses: Yes, No, No Opinion, and No Opportunity to Observe. A note card on which the juror can provide anonymous comments to the judge shall be attached to the survey questionnaire.

(2)(B)(ii) *Survey scoring.* The survey shall be scored as follows:

(2)(B)(ii)(a) A favorable response is Yes.

(2)(B)(ii)(b) Each question shall be scored by dividing the total number of Yes responses by the total number of Yes plus No responses.

(2)(B)(ii)(c) A satisfactory score for a question is achieved when the ratio of favorable responses is 70% or greater.

(2)(B)(ii)(d) A judge's performance is satisfactory if:

(2)(B)(ii)(d)(1) At least 75% of the questions on the survey have a satisfactory score; and

(2)(B)(ii)(d)(2) The Yes responses to all questions when divided by the total number of Yes plus No responses to all questions is 70% or greater.

(2)(B)(iii) *Administration of the survey.* All jurors rendering a verdict in a case and all jurors, including alternate jurors, with at least three hours of trial time with the judge shall have the opportunity to respond to the survey questionnaire.

(2)(B)(iii)(a) For jurors rendering a verdict. While the jurors are waiting for court to convene after declaring that they have reached a verdict, or as soon as possible after the jury has been discharged, the bailiff or clerk in charge of the jury shall provide the jurors with the evaluation questionnaires and comment note cards and two envelopes. One envelope will be preprinted with the mailing address of the Surveyor; the other will be preprinted with the name of the judge. The forms will instruct the jurors to place the comment note cards in the envelope with the judge's name, to place the survey questionnaires, completed and uncompleted, in the envelope with the Surveyor's name, and to seal the envelopes. The bailiff or clerk shall deliver the sealed envelopes to the respective addressees.

(2)(B)(iii)(b) For jurors not rendering a verdict. If a juror or alternate juror is discharged prior to rendering a verdict but after at least three hours of trial time with the judge, the bailiff or clerk in charge of the jury shall administer the questionnaire to the discharged juror in the same manner as in paragraph (a) above.

(2)(C) *Case under advisement standard.* A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge or commissioner for final determination. The Council shall measure satisfactory performance by the self declaration of the judge or commissioner or by reviewing the records of the court.

(2)(C)(i) A justice of the Supreme Court demonstrates satisfactory performance by circulating not more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year.

(2)(C)(ii) A judge of the Court of Appeals demonstrates satisfactory performance by:

(2)(C)(ii)(a) circulating not more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

(2)(C)(ii)(b) achieving a final average time to circulation of a principal opinion of not more than 120 days after submission.

(2)(C)(iii) A trial court judge or commissioner demonstrates satisfactory performance by holding:

(2)(C)(iii)(a) not more than an average of three cases per calendar year under advisement more than two months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

(2)(C)(iii)(b) no case under advisement more than six months after submission.

(2)(D) *Compliance with education standards.* Satisfactory performance is established if the judge annually obtains 30 hours of judicial education subject to the availability of in-state education programs. The Council shall measure satisfactory performance by the self declaration of the judge or commissioner or by reviewing the records of the state court administrator.

(2)(E) *Substantial compliance with Code of Judicial Conduct.* Satisfactory performance is established if the response of the judge or commissioner demonstrates substantial compliance with the Code of Judicial Conduct, if the Council finds the responsive information to be complete and correct and if the Council's review of formal and informal sanctions lead the Council to conclude the judge is in substantial compliance with the Code of Judicial Conduct.

(2)(F) *Physical and mental competence.* Satisfactory performance is established if the response of the judge or commissioner demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.

2006

Rule 3-111.04. Evaluation and certification of judges and commissioners.**Intent:**

To establish the procedures by which the Council will evaluate and certify judges for retention election or reappointment.

To establish the procedures by which the Council will evaluate and certify commissioners for reappointment.

Applicability:

This rule shall apply to the Judicial Council and to the judges and commissioners of the courts of record and courts not of record.

Statement of the Rule:

(1) At its meeting in December of odd-numbered years, the Council shall begin the process of determining whether the judges subject to election at the next general election meet the standards of performance provided for in this rule. The Administrative Office of the Courts shall assemble all evaluation information, including:

- (1)(A) attorney and juror survey scores;
- (1)(B) judicial education records;
- (1)(C) self declaration forms;
- (1)(D) records of formal and informal sanctions by the Supreme Court; and

(1)(E) any information requested by the Council.

(2)(A) Prior to the meeting the Administrative Office of the Courts shall deliver the records to the Council and to the judges being evaluated.

(2)(B) In a session closed in compliance with Rule 2-103, the Council shall consider the evaluation information and make a preliminary finding of whether a judge met the performance standards established by Rule 3-111.03.

(2)(C) If the Council finds the judge met the performance standards, it is presumed the Council will certify the judge be retained in the general election. If the Council finds the judge did not meet the performance standards, it is presumed the Council will not certify the judge be retained in the general election. The Council may certify the judge for retention election or withhold decision until after meeting with the judge.

(2)(D) A presumption against certification may be overcome by a showing of good cause to the contrary. A presumption in favor of certification may be overcome by:

(2)(D)(i) reliable information showing non-compliance with a performance standard; or

(2)(D)(ii) formal or informal sanctions by the Supreme Court of sufficient gravity or number or both to demonstrate lack of substantial compliance with the Code of Judicial Conduct.

(3) At the request of the Council the judge shall meet with the Council in January. At the request of the Council the presiding judge and other reviewing judge shall report to the Council any meetings held with the subject judge, the steps toward self-improvement identified as a result of those meetings, and the efforts to complete those steps. Not later than 5 days after the December meeting, the Administrative Office of the Courts shall deliver to the judges being evaluated notice of the Council's action and any records not already delivered to the judge. If the judge is to meet with the Council, the notice shall contain an adequate description of the reasons the Council has withheld its decision and the date by which the judge is to deliver written materials. The Administrative Office of the Courts shall deliver copies of all materials to the Council and to the judge prior to the January meeting.

(4)(A) At its January meeting in a session closed in accordance with Rule 2-103, the Council shall provide to the judge adequate time to present evidence and arguments in favor of certification. Any member of the Council may present evidence and arguments of which the judge has had notice opposed to

certification. The burden is on the person arguing against the presumed certification. The Council may determine the order of presentation. The Council may continue the closed meeting with the judge to the February Council meeting.

(4)(B) At its January or February meeting in open session, the Council shall approve its final findings and certification regarding all judges standing for retention election at the next general election.

(5) Between the date of certification and the next general election, the Chief Justice shall notify the Judicial Council of any order of sanction entered by the Supreme Court against a judge certified by the Council.

(6) Between the date of certification and the next general election, a member of the Judicial Council voting in the majority may move to reconsider the certification of a judge and present to the Council facts material to certification occurring before or since certification, which, if known at the time of certification, may have led to a contrary result. If the motion to reconsider passes, the Council shall notify and meet with the judge in like manner to the notification and meeting under paragraphs (3) and (4) of this rule. After the meeting the Council shall decide in open session whether to certify the judge. If the Council changes its original certification decision, it shall use the most effective means available to publish its final decision.

(7) The Council shall approve the statements and descriptions required by § 20A-7-702 for the voter information pamphlet. The judge may review and edit the biographical summary. The Administrative Office of the Courts shall promptly deliver the approved statement regarding a judge to the judge and shall deliver the approved statement regarding all judges to the Lt. Governor no later than August 1. Upon delivery to the Lt. Governor, the Administrative Office of the Courts shall publish the statement regarding all judges on the Internet.

(8) For municipal justice court judges, the Council shall use the same evaluation process as for judges of the courts of record, but the process shall begin in December of even numbered years, approximately 14 months prior to the expiration of the municipal judges' terms of office. The Administrative Office of the Courts shall deliver a statement similar in content and purpose to the one described in § 20A-7-702 to the respective judges and to the Mayor of the judges' jurisdictions no later than August 1 prior to the expiration of the municipal judges' terms of office. The Administrative Office of the Courts shall publish the statements on the Internet.

(9) For commissioners, the Council shall use the same evaluation process as for judges, but the Council may remove the commissioner upon the same grounds and statement of reasons for which it could certify a judge not be retained. The timing of meetings shall be such as to conclude all steps at least 60 days prior to expiration of the commissioner's term of office. The Administrative Office of the Courts shall notify the commissioner of the dates of all events and meetings. The Administrative Office of the Courts shall promptly notify the presiding judge of the Council's finding, certification and statement of reasons.

Rule 3-111.05. Evaluation and certification of senior judges.**Intent:**

To establish a performance evaluation program for active senior judges.

Applicability:

This rule shall apply to the Judicial Council and to active senior judges of courts of record.

Statement of the Rule:

(1) *Criteria of performance.* Active senior judges shall be evaluated and certified using the performance criteria in Rule 3-111.02.

2005

ti
cu

ve
su
co

ide
pe
ser
the
18
sen
(
nur
resj
(
cil
jud
has
shal
com
(2
of al
(3
(3
whet
satis
(3
satis
judg
shall
the c
court
(3)
perfo
minir
subje
Coun
curre
review
(3)
duct. f
the se
the Ci
respon
(3)(F
mance
demon
office a
comple
an exa
(4)(A
pointm
Courts
submit
other r
provide
prior to
informa
that the
senior j
judge.
(4)(B)
meet wit
shall del

(2) *Evaluation information.* The evaluation and certification shall be based upon performance during the senior judge's current term of office. The following information shall be used:

(2)(A) *Survey of attorneys.*

(2)(A)(i) The Council shall measure performance by a survey of the attorneys appearing before the senior judge. The survey shall provide the opportunity for the respondent to comment to the Council.

(2)(A)(ii) The survey shall be administered by the Surveyor.

(2)(A)(iii) The Administrative Office of the Courts shall identify as potential respondents all lawyers who have appeared before the senior judge at a hearing or trial during the senior judge's current term. The senior judge shall not review the list of potential respondents. The Surveyor shall identify 180 respondents or all the attorneys appearing before the senior judge whichever is less.

(2)(A)(iv) The Surveyor shall report to the Council the number and percentage of respondents for each of the possible responses on each question.

(2)(B) *Survey of presiding judges and court staff.* The Council shall measure performance by a survey of all presiding judges and trial court executives of districts in which the judge has been assigned. The Administrative Office of the Courts shall distribute survey forms with instructions to return completed surveys to the Surveyor.

(2)(C) The Surveyor shall provide the Council with a report of all survey responses for the senior judge's current term.

(3) *Standards of performance.*

(3)(A) *Surveys.* The Judicial Council shall determine whether the senior judge's scores reported on the surveys are satisfactory.

(3)(B) *Cases under advisement.* The Council shall measure satisfactory performance by the self-declaration of the senior judge or by review of the records of the court. The senior judge shall demonstrate satisfactory performance by complying with the cases under advisement standard in Rule 3-111.03 for the court in which the judge has been assigned.

(3)(C) *Compliance with education standards.* Satisfactory performance is established if the senior judge meets the minimum education requirements established by this Code subject to the availability of in-state education programs. The Council shall measure satisfactory performance during the current term by the self-declaration of the senior judge or by review of records of the state court administrator.

(3)(D) *Substantial compliance with Code of Judicial Conduct.* Satisfactory performance is established if the response of the senior judge demonstrates substantial compliance with the Code of Judicial Conduct and if the Council finds the responsive information to be complete and correct.

(3)(E) *Physical and mental competence.* Satisfactory performance is established if the response of the senior judge demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.

(4)(A) *Judicial Council action.* Upon application for appointment under Rule 11-201, the Administrative Office of the Courts shall provide to the Judicial Council the information submitted by the senior judge as well as survey scores and any other relevant information to the Council. The information provided to the Council shall be provided to the senior judge prior to consideration by the Council. After considering all information, the Council may certify to the Supreme Court that the applicant meets the qualifications for being an active senior judge or withhold decision until after meeting with the judge.

(4)(B) At the request of the Council the senior judge shall meet with the Council. The Administrative Office of the Courts shall deliver to the senior judge being evaluated notice of the

Council's action and any records not already delivered to the senior judge. The notice shall contain an adequate description of the reasons the Council has withheld its decision and the date by which the senior judge is to deliver written materials. The Administrative Office of the Courts shall deliver copies of all materials to the Council and to the senior judge prior to the meeting.

(4)(C) At the meeting in a session closed in accordance with Rule 2-103, the Council shall provide to the senior judge adequate time to present evidence and arguments in favor of certification. Any member of the Council may present evidence and arguments of which the judge has had notice opposed to certification. The Council may determine the order of presentation.

Rule 3-111.06. Administration of the judicial performance evaluation and certification program.

Intent:

To provide for the administration of the performance evaluation program for evaluation and certification.

Applicability:

This rule shall apply to the Judicial Council and to the Standing Committee on Judicial Performance Evaluation.

Statement of the Rule:

(1) The performance evaluation program shall use professionally recognized methods of data collection which may include surveys, onsite visits, caseload management data and personal interviews. Information shall be obtained from multiple sources to provide balanced information. Information from individuals shall be based on personal knowledge of the judge's or commissioner's performance.

(2) The Standing Committee on Judicial Performance Evaluation shall:

(2)(A) propose to the Council a schedule of recommended activities and procedures by which to administer the evaluation and certification program;

(2)(B) with the Council's approval, provide a schedule of activities and procedures to all judges and commissioners;

(2)(C) report to the Council recommendations for improving the evaluation and certification program; and

(2)(D) propose to the Council any surveys and amendments. Subjects inquired into by a survey shall be drawn from but need not include all of the criteria established by Rule 3-111.02.

(3) For each judge and commissioner standing for retention election or reappointment, the Surveyor shall provide to the Council the number and percentage of respondents for each of the possible responses on each survey question. Without identifying individual judges or commissioners, the Surveyor shall provide the Council with the survey results for each court level and geographic region.

(4)(A) Except as provided in this Code, judicial performance records relied upon by the Council in making its findings and certifications are classified as public records upon approval of the final findings and certifications. Prior to the Council's preliminary findings and certifications, survey results shall be marked with a code number in order to withhold from the Council the identity of the judge or commissioner. Upon being classified as a public record, the records shall identify the judge to whom they pertain.

(4)(B) The survey results for each court level and geographic region, without identifying individual judges or commissioners, are classified as public records.

(4)(C) Respondents to surveys shall be anonymous.

(5) Geographic regions are:

(5)(a) Region 1: Judicial Districts 5, 6, 7, and 8;

(5)(b) Region 2: Judicial Districts 1 and 2;

(5)(c) Region 3: Judicial District 3;

2002

- (5)(d) Region 4: Judicial District 4; and
 (5)(e) Region 5: The Supreme Court and the Court of Appeals.

Rule 3-112. Justice Court Standards Committee.**Intent:**

To establish the responsibility for certifying new justice courts and recertifying existing justice courts.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) *Responsibilities of Justice Court Standards Committee.* The Committee shall be responsible for the following:

(1)(A) To recommend to the Council:

(1)(A)(i) minimum guidelines which demonstrate the need for a justice court, and which take into account the population, the number of case filings, the public convenience, the availability of law enforcement agencies and court support services, the proximity of other courts and other factors, and

(1)(A)(ii) operational standards for statutorily required support services such as public facilities, clerical support, bailiff services, prosecution and indigent defense services.

(1)(B) To recommend to the Council the creation and recertification of justice courts.

(1)(C) To recommend to the Council procedures for reviewing requests for waivers or extensions of time to meet guidelines or standards.

(2) *Adoption and review of standards.*

(2)(A) Proposed minimum guidelines for establishing the need for court and operational standards shall be distributed for comment to affected agencies and organizations before submission to the Council for approval.

(2)(B) Operational standards shall be reviewed and updated every two years, beginning in 1992.

(3) *Publication.* Guidelines for establishing the need for a court, operational standards and the procedures for requesting waivers or extensions of time to meet the standards shall be made available upon request.

Rule 3-113. Senior judges.**Intent:**

To establish the responsibility to provide for support services for active senior judges.

To provide for the compensation of active senior judges.

Applicability:

This rule shall apply to judicial employees and to senior judges and active senior judges of courts of record.

Statement of the Rule:

(1) *Support services.*

(1)(A) The court executive of the court in which an active senior judge is serving shall make available clerical and bailiff services as needed in the performance of the judge's official duties. The court executive of the court in which an active senior judge is serving shall make available court reporting equipment and personnel in accordance with Rule 3-305 and Rule 4-201.

(1)(B) The court executive of the court in which an active senior judge is serving shall execute the necessary notice of appointment for the case or matters to which the judge has been assigned.

(1)(C) The court executive of the district in which an active senior judge resides shall provide the following assistance as needed:

(1)(C)(i) secretarial services;

(1)(C)(ii) mail services;

(1)(C)(iii) files and court documents;

(1)(C)(iv) travel arrangements; and

(1)(C)(v) preparation of reimbursement vouchers.

(1)(D) Active senior judges shall be provided with a current set of the soft cover edition of the Utah Code and a subscription to Utah Advance Reports and Annotations, as provided by Rule 3-413.

(2) *Compensation.* Active senior judges shall be compensated at the rate and for the services and duties as set forth herein.

(2)(A) Compensation for the performance of judicial duties related to the assignment of cases shall be at an hourly rate equal to the hourly rate of a district judge, and shall be paid in half-day increments.

(2)(B) Compensation for all other duties, such as attendance at Board meetings, committee meetings, and educational functions required by this Code shall be paid at the rate of \$25.00 per half day (1-4 hours) and \$50.00 per full day (over 4 hours).

(2)(C) For travel required in the performance of judicial duties related to the assignment of cases, senior judges shall be compensated for travel time in excess of one and one-half hours round trip at the hourly rate of a district judge, and for expenses, e.g., per diem, mileage, and lodging, at the rates allowed for state employees.

(2)(D) For travel required in the performance of judicial duties not related to the assignment of cases, senior judges shall be compensated for round-trip travel time as follows:

0 — 1.5 hours	No payment
1.5 — 5.5 hours	\$25.00
More than 5.5 hours	\$50.00

and for expenses, e.g., per diem, mileage, and lodging, at the rates allowed for state employees.

(2)(E) Compensation shall not include any form of benefits, i.e., state retirement contributions, medical or life insurance premiums, etc.

Rule 3-114. Judicial outreach.**Intent:**

To foster a greater role for judges in service to the community.

To provide leadership and resources for outreach.

To improve public trust and confidence in the judiciary.

Applicability:

This rule shall apply to all justices and judges.

Statement of the Rule:

(1) The Committee on Judicial Outreach shall:

(1)(A) create and promote model outreach programs;

(1)(B) promote local outreach programs;

(1)(C) develop policies and rules that encourage judicial participation in outreach programs;

(1)(D) work with educators to incorporate civic education into school curriculums;

(1)(E) work with the Utah State Bar to develop joint outreach programs; and

(1)(F) communicate judicial outreach efforts.

(2) Consistent with the Code of Judicial Conduct and to increase public understanding of an involvement with the administration of justices, the judiciary is encouraged to:

(2)(A) identify and address issues of access to justice within the court system including any physical, language, or economic barriers that impede the fair administration of justice;

(2)(B) educate civic, educational, business, charitable, and other groups about the court system and judicial process; and

(2)(C) take an active part in the community where the participation of the judiciary will serve to increase public understanding and promote public confidence in the integrity of the court system.

2006